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IN THE

Supreme Court of the United States

OCTOBER TERM, 1936

No. 659

THE CINCINNATI SOAP COMPANY, a corporation,
Petitioner,

v.

THE UNITED STATES OF AMERICA,
Respondent.

BRIEF OF PETITIONER

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v.

THE UNITED STATES OF AMERICA,
Respondent.

BRIEF OF PETITIONER

This case is before this Court on certiorari to the United States Circuit Court of Appeals for the Sixth Circuit. The action was brought in the United States District Court for the Southern District of Ohio, Western Division, and submitted to that court on the respondent's demurrer to petitioner's petition in that court. The demurrer was sustained and judgment entered for the defendant (respondent) (R. 22). Appeal was taken to said Circuit Court of Appeals and, while pending therein, petition for writ of certiorari was filed in this Court and was granted.

OPINION BELOW

The said District Court wrote a short memorandum entitled "Decision on Demurrer" (R. 23), in which the court simply stated that, as the parties had requested that the case be expedited, it was not writing an opinion, that it had read and thoroughly considered the briefs and arguments and found the demurrer well taken upon the ground set forth in the demurrer, namely, that the tax was assessed and collected under valid and constitutional laws of the United States.

STATEMENT OF THE CASE

The sole question in this case is the constitutionality of those provisions of Section 602½ of the Revenue Act of 1934 which relate to the processing tax on Philippine coconut oil. The action was brought for a refund of $995.85 paid on the use by the petitioner of Philippine coconut oil in the manufacture of soap. The Government demurred to the petition, thus eliminating issues of fact. The District Court sustained the demurrer and, petitioner not asking to plead further, rendered judgment for the defendant, the United States of America, respondent herein.

The said provisions of Section 602½ of the Revenue Act of 1934 are as follows:

> Section 602½—
>
> "(a) There is hereby imposed upon the first domestic processing of coconut oil . . . or of any combination or mixture containing a substantial quantity of any one or more of such oils with respect to any of which oils there has been no previous first domestic processing, a tax of 3 cents per pound, to be paid by the processor. . . . All taxes collected under this section with respect to coconut oil wholly of Philippine production or produced from materials wholly of Philippine

growth or production, shall be held as a separate fund and paid to the Treasury of the Philippine Islands, but if at any time the Philippine Government provides by any law for any subsidy to be paid to the producers of copra, coconut oil, or allied products, no further payments to the Philippine Treasury shall be made under this subsection. For the purpose of this section the term 'first domestic processing' means the first use in the United States, in the manufacture or production of an article intended for sale, of the article with respect to which the tax is imposed. . . ."

. . . . . .

"(g) All collections except as provided in subsection (a) under this section shall, notwithstanding any other provisions of law, be covered into the general fund of the Treasury of the United States."

(Section 602½ is set out in full in the Appendix, infra, page 1.)

For abbreviation, the expression "Philippine coconut oil," as used in this brief, means, in the language of the statute, coconut oil wholly of Philippine production or produced from materials wholly of Philippine growth or production, including, any combination or mixture containing a substantial quantity of such coconut oil with respect to which there has been no previous first domestic processing. The Bureau of Internal Revenue, in the regulations promulgated under the authority of the Act, has defined "substantial quantity" as 10 per cent or more. (*U. S. Treasury Department, Bureau of Internal Revenue, Regulations 48 Relating to Processing Tax on Certain Oils under Section 602½ of the Revenue Act of 1934.*)

The Revenue Act of 1934 contains provisions regarding income taxes, estate taxes, various excise taxes, capital stock and excess-profits taxes and many other provisions relating to taxes other than the oil taxes; also, in Section 602 contains provisions for tariff duty on certain oils, such

as whale oil, fish oil, etc. Section 602½ deals with processing taxes on certain oils, including many oils other than Philippine coconut oil. This case is concerned exclusively with the provisions of Section 602½ relating to Philippine coconut oil.

Amongst the contentions advanced in this brief, there may be some which are often expressed as contentions that the statutory exaction in question is not a true tax or that under the guise of a tax Congress sought to exercise a power other than its constitutional taxing power. For the sake of simplicity in presentation, the word "tax" will be used in this brief without such prefixes as "so-called" or "alleged" or without putting the word tax in quotation marks or the like. The word "tax" will be used to mean the $995.85 which the statute required petitioner to pay and for the refund of which this action has been brought or similar impositions upon petitioner or other processors of Philippine coconut oil, without, of course, any acknowledgment or implication that the same was within the scope of or a valid exercise of the taxing power; the word tax, as used in this brief, implying neither more nor less than that the statute did impose the payment and designated the imposition a processing tax.

The facts and allegations of the petition may be summarized as follows:

The petitioner, The Cincinnati Soap Company, was a corporation engaged in the manufacture of soap, with office in Cincinnati, Ohio, and manufacturing plant at Dayton, Ohio; so that its manufacturing or processing was exclusively within Ohio and intrastate. Philippine coconut oil was an essential ingredient of a large proportion of the soaps manufactured and sold by it, for which there was no substitute in the manufacture of said large proportion of its soaps (R. 3). Philippine coconut oil is used by many soap manufacturers in the United States as well as by

other processors. The oil is not imported by the soap manufacturers or processors, but is shipped from the Philippine Islands to ports on the Atlantic and Pacific Oceans in tank or other ocean-going ships and consigned to the dealers in such oil. It is unloaded and delivered to such dealers at the ports of entry, and, when so delivered, the importation of the oil and the transportation thereof from the Philippine Islands to the United States terminates. As they receive orders from their customers, the dealers place and ship the oil in railroad tank cars consigned to the plants or warehouses of the soap manufacturers or other customers, who unload the tank cars and place the oil in their own storage tanks or other receptacles located in their own respective manufacturing plants; so that the interstate transportation or commerce in the oil terminates before any processing of the oil does or can commence. All this was true of the oil on the use of which petitioner paid the sum for the refund of which this case was brought. That oil had been purchased from two dealers, one located on the Atlantic coast at Edgewater, New Jersey, and one on the Pacific Coast at West Berkeley, California, and the oil was received by petitioner at Dayton, Ohio, in tank cars into which it had been placed by said dealers. At Dayton the oil was unloaded and placed in petitioner's own storage tanks from which it was drawn from time to time for use in the process of manufacturing soap. None of the oil was imported by petitioner from the Philippine Islands or from any grower or dealer located in the Philippine Islands (R. 3-4).

Philippine coconut oil imported into the United States is not all domestically processed, that is, some of it is marketed and used in the United States without any domestic processing which would subject it to the tax provided in Section 602½ of the Revenue Act of 1934 (R. 4).

Petitioner was unable to recover the amounts imposed upon it by said Section 602½ by increasing the prices at which it sold its soaps; for the competitive conditions of the soap market were such that if petitioner undertook to increase the prices of its soaps to the extent represented by the processing tax, it would have been unable to sell its soaps. The added cost of coconut oil resulting from the processing tax imposed by the statute constituted about 30% of the total manufacturing cost of petitioner's coconut oil soaps, and the effect of this processing tax was such as to make it impossible for petitioner to continue to conduct its business at a profit and subjected that business to an operating loss, although up to the time of the imposition of this processing tax petitioner had been able to conduct its business at a profit. This conversion of petitioner's business from one in which a profit could be made into one in which no profit can be made resulted from the imposition of the tax on the processing of Philippine coconut oil (R. 4-5).

The legal status of the Philippine Islands is involved in some of the constitutional issues in this case, including the effect upon that status of the Philippine Independence Act (*Act of March 24, 1934, C. 84, 48 Stat. U. S. C. Title 48, Sections 1231 to 1247, incl.*). That Act was enacted about forty-seven (47) days previous to the enactment of the Revenue Act of 1934, was accepted by the Philippine legislature on May 1, 1934 (about nine days before the enactment of the Revenue Act of 1934) and was in full force and effect at the time of the levy or collection of any processing tax under Section 602½ of the Revenue Act, including petitioner's said $995.85. The Independence Act provided for the creation of a new government for the Philippine Islands to be known as the Government of the Commonwealth of the Philippines. It provided for a grant of complete independence at the end of a 10-year period. Pur-

suant to the Act, a Philippine constitutional convention was called, and on February 8, 1935, that convention adopted a Constitution of the Philippines. On March 23, 1935, this Constitution was approved by the President of the United States as substantially in conformity with the Act of March 24, 1934, and, on May 14, 1935, the Constitution was approved and adopted by the people of the Philippines; and by virtue of a proclamation of the President of the United States, the new government of Commonwealth of the Philippines was inaugurated on November 15, 1935. (The aforesaid steps in the legislation for and organization of the new Philippine government will be found in *House Document No. 400, 74th Congress, 2d Session, pp. 1, 5-24, 30, 73.* A full copy of the Philippine Independence Act will be found in the Appendix, infra, p. 16.)

The bearing of these facts concerning the Philippine Independence Act and Commonwealth will be discussed in the course of the argument, and references will be made to relevant facts and data contained in various congressional and other public documents and reports and which can be more clearly and conveniently presented in the course of the argument, as compared with setting them forth in this statement of facts.

The Philippine government has never by any law provided for any subsidy to the producers of copra, coconut oil or allied products. (Copra is the solid meat of the coconut from which coconut oil is pressed or milled.)

At this place in the brief, a brief outline of the legislative history of the Revenue Act of 1934 and its chronological relationship with the Independence Act might be helpful in its bearing on the meaning of the Philippine provisions of the Revenue Act.

As introduced in Congress and reported out by the Ways and Means Committee of the House, the Revenue Bill of 1934 provided for a processing tax upon a number of differ-

ent kinds of oil, including coconut oil, but without any special provisions regarding Philippine coconut oil. These oil processing taxes were placed in the bill at the behest of domestic producers of other vegetable and animal fats and oils, such as lard, tallow, butter, soy-bean oil, cotton-seed oil and others. After the revenue bill in its then shape and containing no Philippine oil provisions had passed the House and was pending in the Senate, Congress passed the Philippine Independence Act and it had been accepted by the Philippine legislature. That Act exempted from tariff duties a designated quantity of coconut oil imported from the Philippines. Thereupon, while the revenue bill was still pending in the Senate, the President of the United States and several Senators called to the attention of the Senate that the coconut oil provisions of the pending revenue bill would constitute, in spirit and effect, a violation of the agreement and a breach of the faith which the United States had made with the Philippine people and embodied in the Independence Act, and asked for the elimination of coconut oil from the bill. (The President's letter will be found infra, p. 73.) Out of the debates and actions which followed there ensued the insertion into the bill of the aforesaid special provisions regarding Philippine coconut oil, which provide that the proceeds of the processing tax on Philippine coconut oil shall not be covered into the general fund of the Treasury of the United States but shall be held as a separate fund and paid to the Treasury of the Philippine Islands, and that if at any time the Philippine Government provides for any subsidy to the producers of copra, coconut oil or allied products, no further payments to the Philippine Treasury shall be made.

The parts of the petition numbered IX to XX (R. 6-10) set forth the various grounds in support of the contention of the unconstitutionality of the Philippine coconut oil provisions of the Revenue Act of 1934. As these contentions

on the constitutional issue are summarized in the Summary of the Argument (infra, p. 10), no summary of these portions of the petition is necessary at this place.

SPECIFICATION OF ERRORS TO BE URGED

The order and judgment of the United States District Court in and for the Southern District of Ohio, Western Division, are erroneous and unjust to the plaintiff:

First: In sustaining the demurrer of the respondent to the petition of the petitioner as amended.

Second: In rendering judgment for the respondent upon the petition of petitioner as amended and the demurrer of respondent thereto.

Third: In holding and determining that the provisions of Section 602½ of the Revenue Act of 1934 which imposed a tax upon the first domestic processing of Philippine coconut oil are valid and constitutional.

Fourth: In failing to hold and determine that the provisions of Section 602½ of the Revenue Act of 1934 relating to Philippine coconut oil, including the imposition of a tax upon the domestic processing of such Philippine oil, are invalid and unconstitutional.

Fifth: In failing to determine and hold that said provisions of the Revenue Act of 1934 are invalid and unconstitutional for the reason that they do not fall within and are beyond the scope of the powers granted to Congress by the Constitution of the United States.

Sixth: In failing to hold and determine that said provisions of the Revenue Act of 1934 are invalid and unconstitutional because they constitute an unconstitutional exercise of the powers of Congress under the Constitution of the United States.

Seventh: In failing to hold and determine that said provisions of the Revenue Act of 1934 are unconstitutional and invalid for the reason that they do not fall within the taxing

powers of Congress granted by the Constitution of the United States in Clause 1 of Section 8 of Article I thereof.

Eighth: In failing to hold and determine that said provisions of the Revenue Act of 1934, if claimed to be treated as an exercise of the taxing and appropriation powers of Congress, are an invalid and unconstitutional delegation by Congress of its legislative powers.

Ninth: In failing to hold and determine that said provisions of the Revenue Act of 1934 violate the Fifth Amendment of the Constitution of the United States.

Tenth: In failing to hold and determine that the exaction on the processing of Philippine coconut oil contained in said provisions of the Revenue Act of 1934 is not a true tax but is a regulation which is not within the fields of power granted by the Constitution to Congress and, in that respect, a violation of the Tenth Amendment of the Constitution of the United States.

Eleventh: In failing to hold and determine that said provisions of the Revenue Act of 1934 violate Clause 7 of Section 9 of Article I of the Constitution of the United States, taken in connection with the Fifth Amendment and Clause 1 of Section 8 of Article I of the Constitution.

Twelfth: In failing to overrule the demurrer of the respondent to the petition of petitioner as amended.

SUMMARY OF THE ARGUMENT

First: The levying of a tax upon and collection thereof from one group, such as soap manufacturers and other processors of Philippine coconut oil, for payment of the proceeds thereof into the Treasury of the Philippine Government does not fall within the taxing powers of Congress granted by the Constitution of the United States in Clause 1 of Section 8 of Article I thereof, for the reasons:

(a) Even if the Philippine Islands could be treated as part of the United States, the collection of the tax

from one group in the United States for payment thereof exclusively into the Philippine Treasury would be too local a purpose to come within the meaning of the word "general" in the expression "general welfare."

(b) The Philippine Islands have never been a part of "the United States" within the meaning of the revenue provisions of the Constitution, and the collection of the tax for payment into the Philippine treasury is therefore a purpose not within the meaning of the expression "general welfare of the United States." If the Philippines could be treated as a part "of the United States," then the Philippine coconut oil provisions of the Revenue Act of 1934 would violate the uniformity requirement.

(c) This status of the Philippine Islands as not a part of the United States within the revenue provisions of the Constitution was strengthened by the Philippine Independence Act, followed by the creation of the new Government of the Philippine Commonwealth, which Act, while postponing complete independence for 10 years, strengthened during those 10 years the status of the Philippine Islands in domestic and constitutional law, as independent territory and government in all respects except those in which the Independence Act expressly reserved certain powers to the United States.

(d) These provisions of the Revenue Act of 1934 do not provide for any revenue whatever to or for the government of the United States or for the support of, or the financing of the government of the United States. On the contrary, these provisions expressly exclude revenue to or for the United States as the purpose of the tax, by providing that the entire proceeds of the collections shall go into the Philippine treasury. As appears from the legislative history of these provisions, the reason for this exclusion was that in the Philippine Independence Act the United States had specified the amount of Philippine coconut oil which would be free of duty, and these provisions of the Revenue Act of 1934 would constitute a violation of the

spirit or intention, violate understandings which had been reached between the United States and the Philippine people and which were embodied in the Independence Act, and Congress then sought to palliate this breach of faith by making the tax a levy and collection for the Philippine government exclusively.

(e) The Philippine coconut oil provisions of the Revenue Act of 1934, which levied a tax on a purely domestic processing, could not have been and were not for the financing of any of the powers reserved to the United States in the statutes, including the Independence Act, which established the status of the Philippine Islands, nor for the financing of the performance by the United States Government of any of its functions or responsibilities in or in relation to the Philippine Islands or the affairs thereof. The proceeds of the exaction are not specified for payment for or of any activities of any officers or departments or employes or agents of the United States or for the payment of any of the expenses of any activity or responsibility of the United States in the Philippine Islands. On the contrary, the entire proceeds are required to be placed at the exclusive disposal of the Government of the Philippine Commonwealth. No control over the expenditure of the money is reserved to the United States government or any of its officers, and there is no designation in the statute of the purposes for which the Philippine government may or shall expend the collections placed in its treasury. Any attempt to treat the Philippine Commonwealth as an instrument of the United States to determine the uses to which the moneys shall be put would produce a violation of the constitutional principle that Congress cannot delegate its legislative powers.

Second: The tax is levied and collected for the Philippine treasury from a group of soap manufacturers and other processors for a purpose, namely, payment into the Philippine treasury, in which treasury said group has no interest and of which said group is not a beneficiary. The

tax is high and burdensome. For these reasons, as well as for the reason that they do not fall within the taxing powers granted to Congress by the Constitution, the Philippine coconut oil processing tax provisions of the Revenue Act of 1934 violate the Fifth Amendment of the Constitution.

Third: These provisions of Section 602½ which relate to the imposition and collection of the processing tax on Philippine coconut oil and those which provide that the collections shall be transmitted to the Philippine Treasury are inseparable; indeed cannot be separated without completely changing the character, meaning, purpose and effect of the taxing, as well as all other parts of the provisions relating to Philippine coconut oil. This appears from the face of the statute, and the legislative history of these provisions shows unmistakably that they are inseparable parts of one legislative purpose and that the levying and collecting provisions would not have been enacted without the provisions for transmitting the collections to the treasury of the Philippine government.

Fourth: As appears from both the face of Section 602½ of the Revenue Act of 1934 and its legislative history, the provisions regarding Philippine coconut oil represent and were part of a plan for promoting the raising of the prices of and affecting the production volume of certain domestic animal and vegetable fats and oils the production of which is exclusively intrastate, and for affecting the classes of oils to be used by domestic manufacturers in the intrastate production of soap and other domestic articles. For this reason also, said Philippine oil provisions of said section do not constitute a tax within the meaning of Clause 1, Section 8 of Article I of the Constitution, being neither for the raising of revenues for the support of the Government of the United States nor a regulatory measure within any regulatory field granted to Congress by the Constitution.

Fifth: The tax cannot be sustained as an import tax nor as a regulation of interstate or foreign or Philippine commerce, for the reasons:

(a) It is laid upon "domestic processing," that is, upon intra-United States transactions, and it is not laid on imports; nor is all coconut oil from the Philippine Islands subjected to the tax, but only that portion of the imported oil which is processed in the United States; and

(b) All commerce in the oil, whether foreign or interstate, ceases before the use of the oil, which use is the subject of the tax and which use is completely intrastate.

Sixth: The Philippine coconut oil provisions of the Revenue Act of 1934, in directing that the entire proceeds shall not be covered into the general treasury but shall be transmitted to the Philippine treasury, constitute a violation of Clause 7 of Section 9 of Article I of the Constitution, especially when taken in combination with Clause 1 of Section 8 of Article I of the Constitution, and the Fifth Amendment, in that (a) if such direction were to be treated as an appropriation, then arbitrarily, without any relationship between the amount collected and the needs of the beneficiary or any specification as to or control of the functional activities for which the money is to be expended, the entire proceeds, whatever amount they may turn out to be, are transmitted to the Philippine treasury; (b) the entire burden of this contribution to the Philippine treasury is placed on a group of the population of the United States unrelated to that treasury; and (c) the Constitution intends that the proceeds of a general tax (as distinguished from special assessments or contributions in such matters as a drainage district or analogous enterprises where the costs are allocated amongst the direct beneficiaries) shall go into the general treasury and be drawn therefrom under and in accordance with congressional appropriations.

ARGUMENT

I.

Provisions of Section 602½ of the Revenue Act of 1934 Relating to Philippine Coconut Oil Do Not Come Within the Constitutional Scope of the Taxing Power of Congress as Set Forth in Section 8 of Article I of the Constitution of the United States.

Article I, Section 8, Clause 1 of the Constitution of the United States provides:

> "Section 8. The Congress shall have Power to Lay and Collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States."

This clause of the Constitution is not merely a grant of taxing power but also a limitation of taxing power, and unless an attempted exercise of the taxing power comes within the provisions of the clause, it is necessarily invalid because beyond the constitutional scope of the grant of federal taxing power.

The sub-sections of Section 602½ of the Revenue Act of 1934 involved in this case (omitting those portions which are not relevant here, and also omitting, for simplicity and convenience of presentation, the references to combinations or mixtures of coconut oil with other materials, which combinations or mixtures will be considered as falling within the words "coconut oil") provide:

> Section 602½.
>
> (a) There is hereby imposed upon the first domestic processing of coconut oil . . . a tax of 3 cents per pound, to be paid by the processor. . . . All taxes collected under this section with respect to coconut oil wholly of Philippine production or produced from materials wholly of Philippine growth or production, shall

be held as a separate fund and paid to the Treasury of the Philippine Islands, but if at any time the Philippine Government provides by any law for any subsidy to be paid to the producers of copra, coconut oil, or allied products, no further payments to the Philippine Treasury shall be made under this sub-section. For the purpose of this section the term 'first domestic processing' means the first use in the United States, in the manufacture or production of an article intended for sale, of the article with respect to which the tax is imposed, but does not include the use of palm oil in the manufacture of tin plate.

. . . . . .

"(g) All collections except as provided in subsection (a) under this section shall, notwithstanding any other provisions of law, be covered into the general fund of the Treasury of the United States."

It is to be noted that not one penny of the proceeds of the tax is permitted to be drawn out by or paid to any officer, department or employe of the United States. Nor may the Treasurer of the United States keep any of those proceeds, for unless he turns them over to the treasury of the Philippine Commonwealth, he would be violating these statutory provisions. In short, there is only one thing permitted to be done with the money, that is, transmit it to the treasury of the Philippine Commonwealth. The revenue collectors and the United States Treasurer are but conduits from the pockets of the processors to the treasury of the Philippine Islands. Plainly, therefore, the tax is levied for the treasury of the Philippine Islands exclusively and collected exclusively for that treasury.

We are, therefore, here concerned with a tax to be levied upon and collected from one group, namely, soap manufacturers and other processors of Philippine coconut oil in the United States, for payment, indeed in effect direct payment, to another group, namely, the treasury of the

Philippine Commonwealth and the persons in the Philippine Islands to or for whom the Philippine Commonwealth determines to expend the moneys. We contend that the tax on Philippine coconut oil imposed by section 602½ of the Revenue Act of 1934 was not laid to pay the debts or provide for the common defense and general welfare of the United States. It was not laid to provide revenues of or for the United States or for the support of the government of the United States. It was not, therefore, laid for the purposes specified in Section 8 of Article I of the Constitution. It cannot be upheld as an exercise of any taxing power granted to Congress in the Constitution.

In their brief below, the Government's attorneys stressed that the Act of 1934 is on its face a revenue measure with all the features ordinarily characteristic of revenue acts. This may be true of the other parts of the Revenue Act of 1934, with which this instant case is in nowise concerned; but it is completely untrue of those provisions of the said Act with which this case is concerned, namely, the provisions relating to the exaction on the use of Philippine coconut oil in domestic manufacture. In the case of every other tax levied in the Act, the proceeds are placed in the general fund of the Treasury for such congressional appropriations therefrom as Congress may come to make; and this is also true of every oil processing tax provided for in Section 602½ of the Act with the sole and outstanding exception of the provisions on the Philippine coconut oil processing tax. Those provisions on their face are not a revenue measure; quite the contrary. They not only do not provide for revenue to or for the United States, they exclude the collection of any revenue for the United States. They raise money, it is true, but certainly no argument or citations are needed for the proposition that by revenue, when we are talking of an exercise of the federal taxing power, we mean revenue of or for the United States.

Without other and different legislation by some future Congress, it would be unlawful to place the proceeds of the Philippine coconut oil processing tax in the general fund of the treasury; and it would be unlawful for any officer, department or employe of the United States to draw out or expend one penny of those proceeds for the purposes of the United States Government or any other purpose, and it would be unlawful for the Treasurer of the United States to do anything whatever to those proceeds excepting only to transmit them to the treasury of the Philippine Commonwealth.

United States v. *Norton*, 91 U. S. 566, was concerned with the question whether the Money Order Act was a revenue measure. That Act provided for the issuance of money orders by the Post Office Department, and permitted the compensation of services of members of the Post Office Department in the issuance and sale of money orders to be paid out of the receipts from the sales. This court adopted as the definition of "revenue" the one given by Webster: "The income of a nation, derived from its taxes, duties or other sources, for the payment of the national expenses." The receipts of the Post Office Department, above and outside of said expenses paid therefrom was held to be income from "other sources." Mr. Justice Story's definition of "revenue laws" in *United States* v. *Mayo*, 1 Gall., 306, was such laws "as are made for the direct and avowed purpose of creating revenue or public funds for the service of the Government" was approved; and the statement was made that this same doctrine was reaffirmed in *United States* v. *Cushman*, 2 Sumn. 426.

In *State* v. *Gordon*, 266 Mo. 394, mandamus was brought by the state superintendent of public schools to compel the state auditor to pay a certain sum for use by public schools, and the question was whether certain receipts derived from miscellaneous sources, such as interest on

state deposits, fees earned by several state officers, receipts from various miscellaneous fees, fell within the statutory expression "ordinary revenues." The court said the question turned on the meaning of the two words "ordinary revenues," and proceeded to quote definitions of "revenues" from various dictionaries and from two decisions of this Court, one of them *United States* v. *Bromley*, 53 U. S. 88, in which occurs the passage "Revenue is the income of a state." The Missouri court decided that the word "revenue" is broader than and includes taxation as well as other sources of income, and came to the conclusion that the proper definition of "revenue" is:

> ". . . the annual and current *income* of the state, however derived, *which is subject to appropriation for general public uses.* This excludes such income as the constitution or any permanent existing law may specifically devote to a special purpose, in contradistinction to a general public use or which is not required to be paid into the state revenue fund, but into a special fund, e. g., the collateral inheritance tax specially collected for the support of the state university and its departments; the money derived from license fees or motor vehicles; fees paid into the state treasury to the credit of the Insurance Department Fund, and others of similar sort." (Italics ours.)

Money which the United States may not use or dispose of is certainly not income of the United States. The fact that the processing tax on Philippine coconut oil is collected by United States collectors and the customary procedural provisions regarding penalties and refunds apply to it, does not make its proceeds revenues or income of the United States. The collectors collect for the Philippine treasury, and the proceeds are not made available for appropriations by Congress. The collectors and the separate fund into which the collections are temporarily placed are

made by the statute simply conduits from the processors to the treasury of the Philippine government.

In *Dooley* v. *United States*, 183 U. S. 151, the question was whether a tax laid on imports into Porto Rico fell within the taxation or revenue provisions of the Constitution. The fact that the collections were made by the United States Internal Revenue collectors was claimed to be an indication that the measure under discussion was a tax or revenue measure. This Court denied this claim, saying (P. 157):

> "The mere fact that the duty passes through the hands of the revenue officers of the United States is immaterial, in view of the requirement that it shall not be covered into the general fund of the Treasury, but be held as a separate fund for the government and benefit of Porto Rico."

The Child Labor Tax statute and other statutes which this Court has invalidated as not true tax laws or constitutional exercises of the taxing power all contained the customary collection and administrative features of a tax or revenue act. Validation of a provision which itself is beyond the power of Congress to enact, certainly cannot be accomplished by merely putting the provision in a general revenue act, nor can such inclusion miraculously convert a fund placed at the exclusive disposal of the executive and legislative organs of the Philippine government into revenue of or for the United States.

The Government's attorneys cite the case of *Hampton & Co.* v. *United States*, 276 U. S. 394, but in that case this Court said (p. 412):

> "So long as the motive of Congress and the effect of its legislative action are to *secure revenue for the benefit of the general government*, the existence of other motives in the selection of the subjects of taxes cannot invalidate congressional action . . ." (Italics ours.)

In the case of *Nigro* v. *United States*, 276 U. S. 332, where Mr. Chief Justice Taft was discussing the Doremus (anti-narcotic) case, the opinion stated (at p. 353):

> ". . . Since that time, this Court has held that Congress by merely calling an act a taxing act, cannot make it a legitimate exercise of the taxing power under section 8 of article I of the Federal Constitution, if in fact the words of the act show clearly its real purpose is otherwise."

Non-revenue provisions are frequently put into general revenue acts, as, for instance, riders. The detailed legislative history of the provisions of Section 602½ of the Revenue Act of 1934 (which is set forth in the appendix, p. 51, and discussed in later portions of this brief) show that until the bill reached the floor of the Senate it contained no special provisions for Philippine coconut oil and required that the proceeds of all taxes on coconut oil shall go into the general fund of the Treasury. When Congress, before it would enact the measure, took Philippine coconut oil out of this requirement, Congress made a radical differentiation between the tax on the processing of Philippine oil and all the other taxes included in the measure. That the Philippine coconut oil provisions constitute a tax on a group of American manufacturers for the Philippine (not the United States) treasury and for Philippine (not United States) revenue is plain.

(a) The word "general" in the expression "general welfare" in Article I, Section 8 of the Constitution is a limitation of the federal taxing power and excludes taxation exclusively for a geographically local beneficiary.

This and other courts have had occasion to interpret the word "general" in the expression "general welfare" in Article I, Section 8 Clause 1, of the Constitution, and have

declared that this word "general" has a significance as a limitation upon the federal taxing power, and that one limitation created by this word "general" excludes an objective which is entirely local.

In *United States* v. *Butler*, 297 U. S. 1 (p. 66), this Court said:

> "That the qualifying phrase must be given effect all advocates of broad construction admit. Hamilton, in his well known Report on Manufacturers, states that the purpose must be 'general, and not local.' . . . Story says that if the tax be not proposed for the common defence or general welfare, but for other objects wholly extraneous, it would be wholly indefensible upon constitutional principles. And he makes it clear that the powers of taxation and appropriation extend only to matters of national, as distinguished from *local*, welfare." (Italics ours.)

In the *Passenger Cases in 1849* (Smith v. Turner), 7 Howard, 283, this Court said (p. 446):

> "Nor has Congress power to lay taxes to pay the debts of a state nor to provide by taxation for its general welfare. Congress may tax for the *Treasury of the Union* and here its power ends." (Italics ours.)

The following passage from the case of *Washington Water Power Company* v. *City of Coeur D'Alene*, District Court of Idaho, 9 Fed. Supp. 263, contains an illuminating expression of the significance of the word "general" in the expression "general welfare" (p. 268-270):

> ". . . The Supreme Court and interpreters of the Constitution have given it the construction that if the welfare be not general but special, it is not within the scope of the constitution, and the limitation of the words 'general welfare' and its object and operation are to be general and not local. It does not grant powers to Congress to appropriate moneys of the national

> government for local or state benefit, as such appropriation is restricted to purposes of common defense and of national benefit, affecting the nation as a whole. This view and spirit and spirit of construction was recognized by the Supreme Court when speaking through Mr. Chief Justice Marshall in considering the general welfare clause in the case of *Gibbons* v. *Ogden*, 9 Wheat. 1,195, 6 L. ed. 23, . . .
>
> 'The discretion in Congress to appropriate money is restricted to purposes of a general nature 'not local, national, not state benefit,' and an appropriation for purely a local purpose would be an abuse of discretion.' ''

Story on the Constitution, 5th edition, Vol. 1, Chap. XIV, Section 922, p. 673, says:

> "A power to lay taxes for any purpose whatsoever is a general power; a power to lay taxes for certain specified purposes is a limited power. A power to lay taxes for the common defence and general welfare of the United States is not in common sense a general power. It is limited to those objects. It cannot constitutionally transcend them. If the defence proposed by a tax be not the common defence of the United States, if the welfare be not general, but special, *or local*, as contradistinguished from national, it is not within the scope of the Constitution." (Italics ours.)

Obviously a tax levied for exclusive transfer of the proceeds into the treasury of the state of Illinois, the use of the fund to be controlled by the legislature of that state, would not satisfy this "general" requirement of the Constitution. The Philippine Islands are obviously at least as local as any state. Consequently, the Philippine coconut oil processing tax provisions of the Revenue Act of 1934 are not for the general welfare within the meaning of Clause 1, Section 8, Article I of the Constitution, and, being neither for the common defense nor the payment of any of the

United States debt, are not within and therefore are beyond the constitutional scope of the taxing power of Congress.

The contention is made by the Government's attorneys, however, that the Philippine Islands have a special status which makes any levy for the Philippine treasury a tax for the general welfare of the United States. So we will examine the question of the status of the Philippine government and whether the placing of an indefinite amount of money into its treasury, with the uncontrolled expenditure thereof lodged in the legislative department of that government, is a matter which falls within the scope of the "general welfare of the United States" clause of Section 8 of Article I of the Constitution.

(b) The history of the status of the Philippine Islands, as defined by statutes and judicial decisions, shows that the Philippine Islands have never been a part of the United States within the meaning of the revenue clauses of the Constitution.

There is no express authority in the Constitution to levy internal taxes on persons or corporations in the United States for payment into the treasury of a dependency or possession of the United States. To ascertain whether such power is derived, without express provision in the Constitution, from the status of the Philippine Islands requires a presentation of the history of that status as created or defined by the statutes and judicial decisions on the subject.

Before proceeding to this history, some reference should be made to the word or concept "sovereignty," especially as the Government's attorneys seem to emphasize the fact that the United States is still the sovereign of the Philippine Islands. Under the American Constitutional system sovereignty is a phase of international law, not of domestic or constitutional law. As between the United States and other nations, the concept sovereignty may be relevant in the deter-

mination of controversies; but the powers of the Congress of the United States over persons or property or transactions within the United States are determined by the Constitution of the United States and are derived from that Constitution, and, in this instant case, no assistance is derivable from the concept sovereignty or the question whether the United States is the sovereign of the Philippine Islands is irrelevant.

By the Treaty with Spain following the Spanish-American War, in 1899, Porto Rico and the Philippine Islands were ceded to the United States. For a short period thereafter these islands were still under the government of the army of occupation and executive acts of the President. The first congressional act relating to these islands was the Act of April 12, 1900 (31 Stat. C. 191) known as the "Foraker Act," which provided temporarily for a civil government and revenues for Porto Rico and imposed duties on imports from Porto Rico to the United States and from the United States to Porto Rico. In the Acts of March 8, 1902 and Act of July 1, 1902 (C. 1369, 32 Stat. 691) Congress temporarily provided for the revenues for the Philippine Islands and for a civil government, and the latter Act was amended by the Act of February 6, 1905 (C. 453, 33 Stat. 689). In 1916 Congress enacted the Act of August 29, 1916 (C. 416, 39 Stat. 545), known as the Jones Act, which established a more autonomous government for the Philippines and which fixed the status of the Philippine Islands down to the time of the Philippine Independence Act.

The first group of the *Insular Cases* reported in *182 U. S.*, dealt with Porto Rico in the period after the cession but before congressional legislation. The conclusions developed in those cases have been held by this Court and universally recognized as applicable to the Philippine Islands. The third of these cases namely *Downes* v. *Bidwell*,

182 U. S. 244, which applies specially and decisively in this instant case, can be best understood by an extensive examination of the majority and minority opinions in the two cases reported earlier in the volume.

DeLima v. *Bidwell*, 182 U. S. 1, was concerned with the duties on importations of sugar from Porto Rico to the United States in the period previous to any action by Congress, the question being whether the then general (Dingley) tariff law, which fixed the duties on imports from "foreign countries," continued to operate on imports from Porto Rico after that island was ceded to the United States and before Congress passed any legislation on the subject. In addition to very lengthy arguments carried in the report, there are lengthy majority and minority opinions. The majority of the court felt that the issue turned on whether or not Porto Rico ceased to be a foreign country after the cession and that if it had thus ceased, the general tariff law ceased to apply to imports from it. The following is the opening paragraph of the opinion of the Court:

> "This case raises the single question whether territory acquired by the United States by cession from a foreign power remains a 'foreign country' within the meaning of the tariff laws."

This statement of the issue was repeated in different form (p. 176):

> "The question involved in this case is not whether the sugars were importable articles under the tariff laws, but whether, coming as they did from a port alleged to be domestic, they were imported from a foreign country—in other words, whether they were imported at all as that word is defined in *Woodruff* v. *Parham*, 8 Wall. 123-132."

After dealing with the questions of jurisdiction and procedure, the opinion turned to the constitutional question (p. 180) in the following passage:

"Whether these cargoes of sugar were subject to duty depends solely upon the question whether Porto Rico was a 'foreign country' at the time the sugars were shipped, since the tariff act of July 24, 1897 (30 Stat. at L. 151, chap. 11) commonly known as the Dingley act, declares that 'there shall be levied, collected, and paid upon all articles imported from foreign countries' certain duties therein specified. . . .

"The status of Porto Rico was this: The island had been for some months under military occupation by the United States as a conquered country, when, by the 2d article of the treaty of peace between the United States and Spain, signed December 10, 1898, and ratified April 11, 1899, Spain ceded to the United States the island of Porto Rico, which has ever since remained in our possession, and has been governed and administered by us. If the case depended solely upon these facts, and the question were broadly presented whether a country which had been ceded to us, the cession accepted, possession delivered, and the island occupied and administered without interference by Spain or any other power, was a foreign country or domestic territory, it would seem that there could be as little hesitation in answering this question as there would be in determining the ownership of a house deeded in fee simple to a purchaser who had accepted the deed, gone into possession, paid taxes and made improvements without let or hindrance from his vendor. But it is earnestly insisted by the government that it never could have been the intention of Congress to admit Porto Rico into a customs union with the United States, and that, while the island may be to a certain extent domestic territory, it still remains a 'foreign country' under the tariff laws, until Congress has embraced it within the general revenue system."

Then, after a discussion of the source of the power to acquire territory, the opinion (p. 197) posed what were stated as the only two possible theories on which the general tariff law could be held to apply, namely, either that

the word "foreign" applies to all countries which were foreign at the time the statute was enacted regardless of later changes of status, or that a country remains foreign under the tariff laws until Congress formally embraces it within the customs union of the states; and the opinion proceeded to state reasons why the Court considered both these theories to be untenable and came to the conclusion that Porto Rico, after the cession, was not a foreign country and therefore no duties could be collected on imports therefrom.

This majority opinion, written by Mr. Justice Brown, was concurred in by Justices Fuller, Harlan, Brewer and Peckham, and was interpreted by three of the justices of the minority as holding, fallaciously in their mind, that as a matter of United States constitutional law territory must be treated as either completely foreign or completely domestic. The lengthy dissenting opinion, beginning on page 200 of the report, was delivered by Justice McKenna and was concurred in by Justices Shiras and White. It begins with the following passage:

> "Mr. Justice Shiras, Mr. Justice White, and myself are unable to concur in the conclusion of the court, and the importance of the case justifies an expression of the grounds of our dissent.
>
> "Settle whether Porto Rico is 'foreign country' or 'domestic territory,' to use the antithesis of the opinion of the court, and, it is said, you settle the controversy in this litigation. But in what sense, foreign or domestic? Abstractly and unqualifiedly,—to the full extent that those words imply,—or limitedly, in the sense that the word 'foreign' is used in the customs laws of the United States? If abstractly, the case turns upon a definition, and the issue becomes single and simple, presenting no difficulty, and yet the arguments at bar have ranged over all the powers of government, and this court divides in opinion. If at the time the duties which are complained of were levied, Porto Rico was as much a foreign country as it was before the

> war with Spain; if it was as much domestic territory as New York now is, there would be no serious controversy in the case. If the former, the terms and the intention of the Dingley act would apply. If the latter, whatever its words or intention, it could not be applied. Between these extremes there are other relations, and that Porto Rico occupied one of them and its products hence were subject to duties under the Dingley tariff act, can be demonstrated."

This same idea, that the determination of the validity of taxation or other legislation does not turn upon any simple abstract, sharp-cut antithesis of foreign or domestic, is expressed again on page 218:

> "As we have already said, to set the word 'foreign' in antithesis to the word 'domestic' proves nothing. Their opposition does not express the controversy. The controversy is narrower. It is whether a particular law applies. That, indeed, may be the consequence of the principle that all laws apply, or that customs laws apply by reason of the provision of the Constitution which requires duties, imposts, and excises to be uniform throughout the United States, and the treaty-making power cannot prevent the application of that provision."

The conclusion expressed in this dissenting opinion was that the Dingley tariff law continued to operate until changed by congressional action, this conclusion being derived both from the words of the treaty and from the general principle of a continuation of existing status until a new status is created by the appropriate authority.

This dissenting opinion referred to the Court's opinion in *Downes* v. *Bidwell*, supra, as containing the arguments which demonstrated the status of Porto Rico, after the cession, as neither foreign or wholly domestic, but as something between complete foreignness and complete domestication, and proceeds in the final paragraph to say:

> "We said at the outset that it could be demonstrated that Porto Rico occupied a relation to the United States between that of being a foreign country absolutely and of being domestic territory absolutely, and because of that relation its products were subject to the duties imposed by the Dingley act. And, concluding, we say we believe that, in this opinion and the one referred to, we have made that demonstration; made it from the Constitution itself, the immediate and continued practice under the Constitution, judicial authority, and the treaty with Spain. . . ."

Mr. Justice Gray also dissented because he deemed the decision of the majority inconsistent with *Downes* v. *Bidwell*, decided on the same day.

The decision in this *DeLima* case was held applicable to the Philippine Islands in the case of *14 Diamond Rings*, 183 U. S. 176, where the question, precisely like that in the *DeLima* case, was whether, in regard to 14 diamond rings brought into the United States from the Philippine Islands after the cession of the Philippines but before any congressional legislation on the subject, the general Dingley tariff law, which imposed duties on "articles imported from foreign countries," applied. In accordance with its decision in the *DeLima* case, the majority of the Court held that after the cession the Philippine Islands was not a foreign country and, therefore, not subject to the Dingley law. The same four Justices who had dissented in the *DeLima* case dissented in this *14 Diamond Rings* case and for the same reasons.

It is important to note that the opinion of the Court in the *Diamond Rings* case reconciled its decision in that case with its decision in *Downes* v. *Bidwell*, by pointing out that the former was concerned with a general tariff law whose validity would be controlled by the constitutional requirement of uniformity, whereas the latter dealt with a special exaction on imports from Porto Rico, as to which the revenue

provisions of the Constitution would not apply. Thus, in this very first case arising from the Philippine Islands, this Court recognized *Downes* v. *Bidwell* as the authoritative determination by this Court that the Philippines were not a part of the United States within the meaning of the revenue provisions of the Constitution.

The second of the Insular Cases, in order of the reports, was *Dooley* v. *United States*, 182 U. S. 222, which was concerned with a duty on imports from the United States into Porto Rico in the period after the cession and before congressional action. The duty had been levied by the President as Commander-in-Chief of the Army, and the legality of the levy was held to depend on whether or not Porto Rico was a foreign country. The majority of the Court, speaking through Mr. Justice Brown, held that the case was governed by the decision in the *DeLima* case; evidently treating the issues identical whether the taxed articles passed from the United States to Porto Rico or from Porto Rico to the United States.

Again Justices White, Gray, Shiras and McKenna dissented, and in the dissenting opinion, this time written by Mr. Justice White, the following passage occurs (page 237):

> "
>
> "There is a *non sequitur* involved in stating that the question is whether Porto Rico was a foreign country *within the meaning of the tariff laws*, and then discussing, not the question thus stated, but a different subject; that is, whether the territory ceded by the treaty with Spain came under the sovereignty of the United States by the effect of the cession."

and, on page 239:

> ". . . It is settled that the power of Congress to lay an impost duty does not give the right to levy such a duty on merchandise coming from one part of the

United States to the other. *Woodruff* v. *Parham*, 8 Wall. 123, 19 L. ed. 382."

The point of all this to be noted and emphasized is that at least the dissenting judges in the *DeLima* and *Dooley* cases were of the opinion that in cases arising under the Constitution and laws of the United States, the issues do not turn upon any simple distinction between foreign and domestic or upon questions of sovereignty under international law, but that, in the interpretation of American constitutional or statutory law, there are, so to speak, grades of foreignness or domesticity according to the relationships involved in the particular statutes before the Court.

We now come to *Downes* v. *Bidwell*, 182 U. S. 244. In that case the four justices who had dissented in the *DeLima* and *Dooley* cases, joined by Mr. Justice Brown, became the majority of the Court, and, though individual justices or groups of justices wrote separate opinions, the positions taken in the dissenting opinions in the *DeLima* and *Dooley* cases, as described and quoted above, became the authoritative views of this Court on the question of the nature of the status of the insular possessions acquired under the treaty with Spain, in the interpretation and application of the Constitution and statutes of the United States. In 1900 Congress had passed a statute known as the *Foraker Act* (31 Stat. 77, C. 191), entitled an "Act temporarily to provide revenue and a civil government for Porto Rico, and for other purposes." This Act established a temporary civil government to be composed of appointive executive officers and an elective legislative body with comprehensive powers over Porto Rican legislation reserved to the United States. The revenue provisions of the Act levied a tax on imports from Porto Rico into the United States, which imports were at a lesser rate than the rates then prevailing under the general tariff statute. The plaintiff had paid such tax on certain articles coming to New York from Porto

Rico and sued for a refunder thereof. The subject matter of the case was the validity of this imposition upon imports from Porto Rico, or, in other words, whether in dealing with imports from the insular possessions ceded by Spain, Congress was bound by the provisions of Article I, Section 8, Clause 1 of the Constitution, requiring duties, imposts and excises to be uniform "throughout the United States." The opinion of the Court, speaking through Mr. Justice Brown, concluded (p. 287):

> "We are therefore of the opinion that the Island of Porto Rico is a territory appurtenant and belonging to the United States, but not a part of the United States within the revenue clauses of the Constitution; that the Foraker Act is constitutional, so far as it imposes duties upon imports from such Islands, and that the plaintiff cannot recover back the duties exacted in that case."

Three of the concurring Justices, namely Justices White, Shiras and McKenna, speaking through Mr. Justice White, wrote a concurring opinion, which agreed that Porto Rico had not, either by virtue of the cession from Spain or the Foraker Act, become incorporated into and therefore has not and had not become a part of the United States. This opinion cited (p. 309) *Fleming* v. *Page*, 9 Howard 603, which had held that Tampico, although a possession of the United States and, in an international sense, a part of the territory of the United States, yet, "in the sense of the revenue laws, Tampico was a foreign country." This concurring opinion of Mr. Justice White goes on to say (p. 341):

> "The result of what has been said is that whilst in an international sense Porto Rico was not a foreign country, since it was subject to the sovereignty of and was owned by the United States, it was foreign to the

> United States in a domestic sense, because the Island had not been incorporated into the United States, but was merely appurtenant thereof as a possession. As a necessary consequence, the impost in question assessed on merchandise coming from Porto Rico into the United States after the cession was within the power of Congress, and that body was not, moreover, as to such imposts, controlled by the clause requiring that imposts should be uniform throughout the United States; in other words, the provision of the Constitution just referred to was not applicable to Congress *in legislating for Porto Rico.* (Italics ours.)

The fourth concurring Justice, Mr. Justice Gray, also wrote a short concurring opinion (p. 345), in which he states that in substance he was agreeing with the opinion of Mr. Justice White, and he summarizes his reasons for concurrence and emphasized that civil government in the insular possessions

> "... can only be put in operation by the action of the appropriate political department of the [United States] government, at such time and *in such degree* as that department may determine." (Italics ours.)

The minority judges, adhering to the opinions which they had expressed in the *DeLima* and *Dooley* cases, ridiculed the idea that a territory can be partly foreign and partly domestic, and carried this point of view so far as to express the opinion that even if it took congressional action to make any territory a part of the United States, the Foraker Act, when it provided a temporary civil government and a temporary revenue system for Porto Rico, produced a complete incorporation of that Island into the United States.

The levying of duties on imports between Porto Rico and the United States was upheld, not as an exercise of any taxing power granted in the revenue clauses of the Constitution, but as an exercise by Congress of its powers as the

governing body over or of the insular possessions and dependencies. That the decision made and the Court's opinion in *Downes* v. *Bidwell* apply equally to the Philippines has been expressly held and recognized in the cases which arose from the Philippines.

Downes v. *Bidwell* establishes several principles particularly pertinent in the instant case, namely: (a) that the acquisition of the Philippine Islands did not make them a part of the United States within the taxation and revenue clauses of the Constitution of the United States; (b) that the Philippine Islands would not become a part of the United States within the revenue clauses of the Constitution unless and until Congress incorporates them into the United States (which, of course, Congress has never done); (c) that in construing and applying the constitutional law of the United States or the statutes of the United States, as distinguished from international law governing relations between the United States and foreign countries, the antithesis between "foreign" and "domestic" does not exist with relation to the Philippine Islands; (d) that the nature of the status of the Philippine Islands, including the degree of foreignness or domesticity or the degree of dependence or self government, is a matter for determination by Congress, and is, at any time, such as Congress may have determined or defined in the statutes relating to the status or government of the Philippine Islands; and (e) that the levying of duties or imposts upon imports of goods from the Philippine Islands into the United States, or vice versa, are not exercises of the taxing power of Congress under the taxation or revenue clauses of the Constitution or attributable to or sustainable as exercises of such taxing power, but are exercises of the power of Congress as the legislative body over the insular possessions or dependencies which belong to, though are not a part of, the United States and derive their validity from that power.

This ruling as to the meaning of "United States" in the phrase "throughout the United States" certainly applies equally to the words "United States" in the phrase "of the United States." The two "United States" are in the same clause of the same section dealing with the same subject. As Congress has not only never incorporated the Philippine Islands into the United States, but, on the contrary, has progressively increased the degree of their independence, the consequence is that, from the time of the cession from Spain to the present moment, the Philippine Islands have never been and are not a part of the United States within the revenue provisions of the Constitution, that is, within the meaning of Clause 1 of Section 8 of Article I of the Constitution, and no power to levy a tax for the treasury of the Philippine Islands falls within the powers of Congress granted by that clause. If Congress should levy a tax on persons or property in the Philippine Islands, the validity thereof would have to be derived not from the taxation clauses of the Constitution but from the power of Congress as the controlling legislative organ of a possession or dependency acquired by the United States under the war and treaty provisions of the Constitution; and under *Downes* v. *Bidwell*, the same would be true of an import tax on imports from the Philippines. For an internal tax on persons, property or processes within the United States for Philippine, not United States, revenue, the Constitution furnishes no support whatever.

Downes v. Bidwell has been a much cited case, but its authority as establishing the principle that the Philippine Islands did not become and have not been a part of the United States, and that the status of the Islands is a matter for determination by Congress in the statutes which define that status, has never been impaired but, on the contrary, has been repeatedly reaffirmed.

Dorr v. *United States*, 195 U. S. 138, was concerned with the question whether the constitutional requirement of jury trial applied to the Philippine Islands in the period after the cession and before legislation on the subject by Congress, and, citing *Downes* v. *Bidwell*, this Court held that, in legislating for the Philippine Islands, Congress was not limited by the constitutional provision for jury trial, and that the status of the Islands would be such as defined by congressional legislation on the subject, and, speaking of legislation on the subject, the opinion stated (pp. 143-4):

> "The legislation upon the subject shows that not only has Congress hitherto refrained from incorporating the Philippines into the United States, but in the act of 1902, providing for temporary civil government (32 Stat. at L. 691, chap. 1369), there is express provision that section 1891 of the Revised Statutes of 1878 shall not apply to the Philippine Islands. This is the section giving force and effect to the Constitution and laws of the United States, not locally inapplicable, within all the organized territories, and every territory thereafter organized, as elsewhere within the United States."

On the question of the interpretation of the so-called territories clause of the Constitution, Article IV, Section 3, the Court quoted from *Cooley, Principles of Constitutional Law* (pp. 147-148):

> "'. . . The practice of the government, originating before the adoption of the Constitution, has been for Congress to establish governments for the territories; and whether the jurisdiction over the district has been acquired by grant from the states, or by treaty with a foreign power, Congress has unquestionably full power to govern it; and the people, except as Congress shall provide for, are not of right entitled to participate in political authority until the territory becomes a state. Meantime they are in a condition of temporary pupilage and dependence; and while Congress will be ex-

pected to recognize the principle of self-government to such extent as may seem wise, its discretion alone can constitute the measure by which the participation of the people can be determined.' "

See also *Kepner* v. *United States,* 195 U. S. 100.

In *Rassmussen* v. *United States,* 197 U. S. 516, 520, a case concerned with Alaska, this Court said:

". . . The power to acquire territory without incorporating it into the United States as an integral part thereof, as we have said, was sustained upon the reasoning expounded in the opinion of three, if not of four, of the judges who concurred in the judgment in *Downes* v. *Bidwell,* that reasoning being in effect adopted in the *Dorr Case* as the basis of the ruling there made, the court saying:

'. . . Until Congress shall see fit to incorporate territory ceded by treaty into the United States, we regard it as settled by that decision (*Downes* v. *Bidwell*) that the territory is to be governed under the power existing in Congress to make laws for such territories, and subject to such constitutional restrictions upon the powers of that body as are applicable to the situation.' "

In *Balzac* v. *People of Porto Rico,* 258 U. S. 298, which also dealt with the question of constitutional right to trial by jury in Porto Rico, the opinion (p. 305) contains the following interpretation of *Downes* v. *Bidwell:*

". . . It was further settled in *Downes* v. *Bidwell,* 182 U. S. 244, . . . and confirmed by *Dorr* v. *United States,* 195 U. S. 138, . . . *that neither the Philippines* nor Porto Rico *was territory which had* been incorporated in the Union or *become a part of the United States,* as distinguished from merely belonging to it; and that the acts giving temporary governments to the Philippines (July 1, 1902, 32 Stat. at L. 691, . . .), and to Porto Rico (April 12, 1900, 31 Stat. at L. 77, . . .), had no such effect. *The Insular Cases revealed much*

diversity of opinion in this court as to the constitutional status of the territory acquired by the Treaty of Paris . . . ending the Spanish War, but the Dorr Case shows that the opinion of Mr. Justice White of the majority in Downes v. *Bidwell has become the settled law of the court.''* (Italics ours.)

See also *Neuss Hesslein & Co.* v. *Edwards,* 24 Fed. (2d) 999.

(c) The statutes defining or establishing the status of the Philippine Islands.

The *Act of March 8, 1902, 32 Stat. at L. 54,* contained provision for revenues for the Islands in the form of a tax on imports of Philippine products for payment into the Philippine treasury at a rate less than the duties on similar products from foreign countries, which taxes, of course, had exactly the same legal basis as specified in *Downes* v. *Bidwell,* namely an exercise of the powers of Congress as the legislative organ over insular possessions, but did not change the status of the Philippine Islands. Then came the *Act of July 1, 1902, C. 1369, 32 Stat. 691,* which provided a government for the Philippines, with a local elective legislative body and some degree of local self-government and many provisions which were repeated in the later Jones and Independence Acts.

A major change in the status of the Philippine Islands was made by Congress in the *Act of August 29, 1916, C. 416, 39 Stat. 546* (*Jones Act*). This may be said to have created the first autonomous government of the Philippine Islands and defined the status of the Islands during the whole period until the Independence Act of 1934. The 1916 Act enlarged the field of Philippine self-government, or, in other words, diminished the field of Philippine dependence; and, indeed, in all its legislation concerning the Philippine Islands, Con-

gress has progressively enlarged the field of self-government and diminished the field of dependence, so that not only has Congress not incorporated the Philippines into the United States, but, on the contrary, has increasingly taken the opposite direction.

In this connection the preamble of the *Jones Act* is significant. It reads:

> "Whereas it was never the intention of the people of the United States in the incipiency of the war with Spain to make it a war of conquest or for territorial aggrandizement; and
>
> "Whereas it is, as it has always been, the purpose of the people of the United States to withdraw their sovereignty over the Philippine Islands and to recognize their independence as soon as a stable government can be established therein; and
>
> "Whereas for the speedy accomplishment of such purpose it is desirable to place in the hands of the people of the Philippines as large a control of their domestic affairs as can be given them without, in the meantime, impairing the exercise of the rights of sovereignty by the people of the United States, in order that, by the use and exercise of popular franchise and governmental powers, they may be the better prepared to fully assume the responsibilities and enjoy all the privileges of complete independence . . ."

This clearly shows a determination of Congress that the Philippine Islands had not been incorporated into the United States and that, on the contrary, congressional legislation would be in the direction of increasing self-government until complete independence be reached.

In the Appendix, pp. 4-15, will be found the text of those sections of the *Jones Act* most relevant to the question of the status given to the Philippine Islands by that Act.

Section 1 defines "the Philippines"; Section 2 deals with the citizenship status of the inhabitants.

Section 3 (quoted in full in the Appendix, p. 4) is in the nature of a bill of rights, and contains the provision that "no money shall be paid out of the treasury except in pursuance of an appropriation by law." The treasury referred to is the treasury of the Philippine government, and the "appropriation by law" refers to acts of the Philippine legislature; thus showing that from at least this 1916 statute the control over purposes for which moneys in the Philippine treasury can be used was placed in the Philippine legislature.

Section 4 (Appendix, p. 5) requires the government of the Philippines to pay all of its own costs and expenses for the salaries of its officials and the conduct of their offices and departments, and all expenses and obligations contracted for the internal improvement or development of the islands, excepting only the military works undertaken by the United States.

Section 19 (Appendix, p. 10) provides that if the Philippine legislature fails to appropriate the amounts necessary for the support of the government for an ensuing fiscal year, the sums appropriated in the previous appropriation bill shall be deemed as reappropriated for the same objects and purposes for the ensuing year.

Section 29 (Appendix, p. 15) provides that the salaries of all officials of the Philippines, including deputies, assistants and other employees, shall be such and be so paid out of the revenues of the Philippines as shall from time to time be determined by the Philippine legislature, and, if the Philippine legislature fails to make the appropriation, salaries so fixed shall be paid without the necessity of further legislative action.

These provisions of the *Jones Act* plainly demonstrate that the policy of Congress, in dealing with the status of

the Philippines, was that all the expenses and costs and debts of the Philippine government shall be paid out of its own revenues and appropriated by its own legislature. That policy has been adhered to.

The import duties on Philippine products have under the principle of *Downes* v. *Bidwell* always been deemed to be Philippine revenues, that is, revenues collected for the account of the Philippines, and, in accordance with this, the Philippine government has always been prohibited from levying taxes on exports from the Philippines to the United States.

Early in his term of office, President Harding appointed a special Mission on Investigation to the Philippine Islands, which made its report in October, 1921, and this report contains the following paragraph:

> "The Philippine Islands, contrary to general belief, have maintained all the expenses of civil administration since the beginning of American operation from insular revenues and without assistance from the Treasury of the United States, which has, however, defrayed all the costs of the military and naval establishments and fortifications. The only aid received by the Philippine government from the United States has been a $3,000,000.00 appropriation for famine relief made in 1903."

This report will be found published in full in the Appendix of "The Philippine Islands" by W. Cameron Forbes (1928), on page 241 of Volume I of that work. In Chapter 6 of that work, the author states:

> "The civil administration of the Philippine Islands, contrary to a very prevailing misapprehension, has been self-supporting from the beginning of American occupation in August 1898."

These statements would be fully true as of today, for at no time since 1921 or 1928 has the United States contrib-

uted to the treasury of the Philippine Islands or to the expenses or debts of the Philippine government. Under the Act of June 19, 1934 (48 Stat. at L., Pt. 1, Chap. 655, p. 1115), the Philippine treasury was credited with $23,862,750.78, which was the profit resulting from the devaluation of the dollar to the gold equivalent of the balance maintained by the Philippine government in United States banks for its gold standard and treasury certificate funds, but that can hardly be deemed to impair the correctness of the above statements made as of today.

The provisions of the Revenue Act of 1934 levying an internal revenue tax on American persons or transactions for the Philippine treasury is unprecedented and a departure from all practice both before and since the enactment of the *Jones Act*.

Returning to the description of the *Jones Act:*

Section 5 provides that the statutory laws of the United States thereinafter enacted shall not apply to the Philippine Islands except when they or the *Jones Act* specifically so provide. Section 6 provides that the laws then in force in the Philippines shall continue in force except as they may come to be altered or repealed by the Philippine legislature or by Congress; and Section 7 gives the Philippine legislature the authority to amend or repeal any law continued in force by the Act, excepting where such amendment or repeal would be inconsistent with the Act, and this power of the Philippine legislature to alter or repeal is made specifically applicable to laws relating to revenue and taxation in the Philippines.

Section 9 (Appendix, p. 6) provides that all the property and rights acquired in the Philippine Islands by the United States under the Treaty of Peace with Spain, excepting property designated by the President of the United

States for military or other reservations of the United States, as well as all lands acquired by the Philippine government by purchase, including the land purchased from the religious orders, are placed under the control of the Philippine Islands for the purpose of being administered or disposed of for the benefit of the inhabitants of the Islands; and the Philippine government is given power to legislate with respect to all such property and rights; but acts of the Philippine legislature with respect to the public domain, mining and timber require approval by the President of the United States, who is given a six months period within which to disapprove. The section goes on to provide that where lands of the Islands "have been or may be reserved for any public purpose of the United States" and, being no longer required for the purpose for which reserved, have been or may be, by order of the President, placed under the control of the government of said islands, the order of the President shall be regarded as effectual to give the government of Islands full control and power to administer and dispose of such lands for the benefit of the inhabitants of the Islands. Note that this section treats lands reserved by the United States as reserved "*for the public purpose of the United States*" and places within full control of the Philippine government all lands and rights *not* reserved for "the *public purpose of the United States*"; clearly indicating the congressional intention that all those matters which are reposed in the Philippine government are *not a public purpose of the United States.*

Section 10, which recognizes the right of the Philippine government to enact a tariff law, reserves to Congress direct control over trade relations between the Islands and the United States, and requires the approval of the President for amendment to the tariff of the Philippine Islands. Section 11 prohibits export duties on exports from the Philippines, but otherwise grants a general taxing power

to the Philippine legislature as well as the power to issue bonds and other obligations up to a designated amount.

Section 8 provides that the legislative power is granted to the Philippine legislature, and Section 12 invests these general legislative powers in the Philippines, except as otherwise provided in the Act, in a legislature of two houses, namely the Senate and the House of Representatives. The memberships of each House under Sections 13 and 14 were made elective by the electors of the Philippines.

By Section 21 the chief executive of the Philippine Islands is the Governor-General, to be appointed by the President of the United States, and, under Section 19, he has a substantial veto power over acts of the Philippine legislature. Section 19 also provides that laws enacted by the Philippine legislature shall be reported to Congress, which reserves the power and authority to annul the same. Under Section 21 the Governor-General has the power of appointing certain officers and is given general supervision and control over the departments and bureaus of the Philippine government; but the structural organization of the Philippine administration is left to the Philippine legislature to determine. In general, the Governor-General was given the customary powers of a chief executive.

Sections 23 and 24 provide for a Vice-Governor and Auditor to be appointed by the President. Section 26 and succeeding sections provide for the judicial system, giving the appointment of justices of the Supreme Court to the President of the United States and of the lower courts to the Governor-General; also providing for appeals to the Supreme Court of the United States. Section 28 deals with franchises.

Many of the above noted provisions of the *Jones Act* will be found in the *Independence Act of 1934* in substantially the same form. In general, therefore, the *Act of 1916* cre-

ated a Philippine legislature, elected by the people of the Islands, with all the usual legislative powers, subject to certain reservations in Congress or the President; created a chief executive with the customary powers of a chief executive, but kept the power of appointing him and his staff in the President and Senate of the United States; provided for a complete judicial system with the appointment of justices and judges reserved to the United States and with appeal to the Supreme Court of the United States; treated all Philippine lands and rights acquired from Spain or subsequently acquired as the property of and under the control of the Philippine government, excepting only the United States military reservations; and provided for a taxation and revenue system under which the Philippine government was to pay all of its expenses and obligations out of its own revenues, and appropriations from the Philippine treasury by the Philippine legislature were made requisite to any expenditure from that treasury.

The *Jones Act* will be searched in vain for any provision whereby the exercise of any power reserved to the United States was to be financed out of the Philippine treasury. The salaries of the Governor-General and his staff and other officers expressly to be appointed by the President of the United States were treated as expenses of the Philippine government. There is no provision requiring or contemplating any payment by the United States from its own revenues into the Philippine treasury or for the expenses of the Philippine government.

As under the less independent status of the period previous to the *Jones Act* the Philippines were held by this Court as not within the revenue provisions of the Constitution, a fortiori the imposition of taxes on United States persons and transactions for the treasury of the Philippine government established by that Act would not be within the scope of Clause 1, Section 8 of Article I of the Constitution.

(d) The Philippine Independence Act, while postponing complete independence, further reduced the degree or fields of dependency and increased the degree or fields of independence. The levy on coconut oil processing for payment into the Philippine Treasury bears no relationship whatever to the financing of the powers of the United States reserved in the Independence Act. The tax is levied for the Philippine Government, not for the government of the United States, and is consequently outside the constitutional scope of the federal taxing power.

We now come to the Philippine Independence Act, and to the changes in the status of the Philippines created by that Act, which is set out in full in Appendix pp. 16-31.

The Independence Act provided, from the time of the taking effect thereof, a grant to the Philippines of independent powers greater than the previous Philippine government had possessed. Full and complete independence was postponed for a ten-year period, but during that period an increased field of self-government was granted to the new Philippine government; or, to put it another way, the degree of dependency was or the fields of dependency were greater lessened and the degree or fields of independence greatly enlarged; with the consequence that the Philippine Islands not only were not incorporated into or made a part of the United States, but on the contrary became less of an appurtenance to, less a possession of and less a dependency of the United States than before.

Section 1 of the Act provides that the Philippine legislature be called into convention to formulate and draft a constitution for the Government of the Commonwealth of the Philippine Islands: Section 3 provides for the submission of the draft to the President of the United States, and, if approved, Section 4 provides for its submission to the Philippine people, and if a majority of votes be in favor of the constitution, such vote is to be deemed an expression

of the Philippine people in favor of Philippine independence; whereupon, the Governor-General of the Philippine Islands is to call an election for the election of the officers of the Government of the Commonwealth of the Philippine Islands provided for in the new constitution; the results of the election are to be certified to the President of the United States, who is thereupon to issue a proclamation announcing the results of the election, and, upon the issuance of such proclamation, the existing Philippine government shall terminate and the new government shall enter upon its rights, privileges, powers and duties as provided in the new constitution.

Section 2 specifies a number of mandatory provisions regarding the character of the constitution. Insofar as they relate to powers reserved to the United States, they will be discussed in detail later in this brief (infra, pp. 53-56), and a further detailed discussion of them at this point is therefore omitted.

Section 5, corresponding to a similar section of the *Jones Act*, provides that all property and rights acquired in the Philippine Islands by the United States under the treaty with Spain, except land or other property theretofore designated by the President for military or other reservations of the Government of the United States, are granted to the new Government of the Commonwealth of the Philippine Islands.

Section 6 deals generally with trade relations between the United States and the Philippines in the ten-year period preceding complete independence. The only provision thereof with which the present case is closely concerned is that which fixes 200,000 long tons of coconut oil per annum as the maximum quota exempt from general customs or tariff duties of the United States. As will be seen later, this paragraph of Section 6 played an important

role in the legislative history of the Philippine coconut oil provisions of the Revenue Act of 1934.

Sections 7 and 9 deal with certain relations between the United States and the Philippine Islands during the ten-year period preceding withdrawal of American sovereignty which will be discussed shortly. Section 8 deals with immigration.

From that point on the Act relates to the period after complete independence, until we come to Section 15, which continues in force the laws effective at the time of the enactment of the Independence Act until amended or repealed, respectively, by the legislature of the Commonwealth or Congress and specifies that the new Commonwealth government shall be the successor to the then (that is, the *Jones Act*) government of the Philippines.

As the Independence Act authorized the President to approve of the constitution of the new Commonwealth as framed by the Philippine legislature and approved by the Philippine electorate, the provisions of that constitution became a part of the legal material which creates and defines the status of the Islands after the enactment and acceptance of the Independence Act. That constitution was intended to be the constitution for both the ten-year period and the post-independence period; and the reservations of the powers of the United States operative during the ten-year period were placed in what was called an "Ordinance Appended to the Constitution." This constitution is a lengthy document, and, as some of its details are not of significance on the specific issues of the instant case, the full text has not been included in the Appendix but will be found in *House Document 400, 74th Congress, 2d Session*, pages 5 ff., which is a compilation of documents relating to the inauguration of the new government of the Philippines. The more relevant parts have been copied in the

Appendix, the pages of which will be cited as we reach them in the description of the constitution; to which we will now proceed.

Article I defines the national territory; Article II is entitled "Declaration of Principles," and Section 1 thereof contains the sentence—"Sovereignty resides in the people and all government authority emanates from them." Article III is the Bill of Rights; Article IV defines citizenship; Article V deals with suffrage.

Article VI creates the bi-cameral legislative department, designates it "National Assembly," and provides for the election of members (who are required to be Philippine electors), sessions and other customary matters. Its opening sentence is "The legislative power shall be vested in a National Assembly." It provides for an annual budget submitted by the president of the Commonwealth, and grants veto powers to that president, including a veto power over particular items of the appropriation bill; and specifies that "No money shall be paid out of the treasury except in pursuance of an appropriation made by law." (The text of Sections 1, 2, 9 and 13 of Article VI are in Appendix, pp. 32-33.)

Article VII deals with the executive department, and Section 1 provides that "The executive power shall be vested in a President of the Philippines." This president is to be elected by the direct vote of the people of the Philippines. As the chief executive had theretofore been an appointive office filled by the President of the United States, this change, considering the great powers granted to the president of the Philippine Commonwealth, constitutes a great enlargement of the self-governing field of the Philippine government. (The text of Sections 1, 2, 3, 11 and 12 of this Article are in Appendix, pp. 33-35.)

Article VIII is concerned with the judicial department, and provides for appointment of all justices and judges by

the president of the Commonwealth with the consent of the National Assembly's Commission on Appointments.

Articles IX to XI deal with impeachment, the general auditing office, and the civil service.

Article XII (Section 1 of which is in Appendix, p. 36) deals with conservation and utilization of natural resources, and grants to the state, that is, the Philippine Commonwealth, very extensive powers over land and other natural resources; Article XIII deals with the flag, the oath to support and defend, the official language and miscellaneous matters; and Article XIV deals with amendments.

The *Ordinance Appended to the Constitution* (set forth in full in the Appendix, pp. 37-40) sets forth those powers reserved to the United States and those relationships between the new Philippine Commonwealth and the United States which, under the provisions of the Independence Act, are to be in force during the ten-year period between that Act and final and complete independence.

The Independence Act, together with the approval of the new Philippine constitution, grants complete legislative, executive, and judicial powers to the new Philippine government, subject only to the express reservations contained in the Act and the Ordinance, and with a definite commitment to complete termination of American sovereignty at the end of the ten years. The status thus created by Congress during the ten-year period represents, as a matter of United States constitutional and domestic law as distinguished from international law, a great decrease of the field of Philippine dependency and a corresponding great increase of the field of Philippine self-government or independence.

The congressional policy of independence for the Philippine Islands, as distinguished from either complete dependence or complete incorporation into the United States, has been to commit the United States to ultimate independence,

to take the road leading to that goal and, from time to time along the road, to enlarge the field of non-dependence and self-government. As under *Downes* v. *Bidwell* and subsequent cases, the Philippine Islands were not a part of the United States, within the meaning of the revenue clauses of the Constitution, at the beginning of American ownership of those islands, and could become a part only by Congress' incorporating them as a part, a fortiori they have become less than ever, so to speak, a part of the United States since the enactment of this Independence Act, and the revenue or taxation clauses of the Constitution grant no power to levy a tax on persons or transactions within the United States for the treasury of the government of those Islands, that is, for the financing of those functions of that government which fall within the granted field of self-government and which under the express provisions of the Independence Act are to be paid for by the Philippine government out of its own revenues.

The attorneys for the Government, in their argument below, seemed to contend that the Philippine coconut oil tax may be considered an exercise of the power of the United States to raise and expend revenues for the financing of the duties and responsibilities of the United States in relation to the Philippines. This contention is completely untenable. In levying the tax for the Philippine treasury, Congress was not purporting to, was not seeking to and did not levy the tax to finance the performance by the United States Government of its own reserved functions in or for the Philippines. Any such contention is utterly unrealistic. The United States would naturally place in its own treasury moneys which it is to expend for the performance of its functions; yet not one penny levied on Philippine coconut oil is for the United States Treasury. Furthermore, the moneys levied and collected are required to be transmitted to the Philippine treasury without the

slightest condition, limitation or provision that they shall be expended for anything which has any relationship whatever to the performance by the United States of its duties and responsibilities in relation to the Philippines or the financing thereof.

Let us examine in some detail the powers reserved by the United States in the Independence Act, to check up whether the levying on the processing in the United States of Philippine coconut oil for the Philippine treasury can be found to have any relationship to the financing of the exercise by the United States of the powers, responsibilities and functions which it reserved in the Independence Act and which were granted in the Ordinance appended to the new Philippine constitution. The references will be to sections of the Act and the Ordinance.

Act Section 2-(a)-(1)—Ordinance Section 1-(1) provides that all citizens of the Philippine Islands shall owe allegiance to the United States. This can hardly be said to involve any expenditure by the United States; but if the enforcement of the allegiance should require activity by the United States, that activity would have to be financed out of appropriations from the general treasury of the United States and could not, under the Revenue Act of 1934, be taken out of the moneys transmitted to the Philippine treasury.

Act Section 2-(a)-(4)—Ordinance Section 1-(4) provides that property owned by the United States shall be exempt from taxation. This is simply a restraint upon tax laws of the Philippine government and involves no expenditure by the United States. Just the contrary, it frees the United States from expenditure.

Act Section 2-(a)-(6)—Ordinance Section 1-(6)—This provides that the public debt of the Philippines shall not exceed limits now or hereafter fixed by the Congress of the United States, and that no loans shall be contracted in for-

eign countries without the approval of the President of the United States. The exercise of these powers of the United States would involve action by Congress or the President. Congressmen and the President have annual salaries and these and their expenses would be paid out of United States revenues and appropriations.

Act Section 2-(a)-(7)—Ordinance Section 1-(7) provides that the debts, liabilities and obligations of the Philippine Government and its subdivisions, valid and subsisting at the time of the adoption of the Philippine constitution, shall be assumed and paid by the new government. This exempts the United States from any financial responsibility, and so involves no expenditures by the United States.

Act Section 2-(a)-(9)—Ordinance Section 1-(9) provides that acts affecting new currency, coinage, imports, exports, and immigration shall not become law until approved by the President of the United States. Here again the exercise of the reserved power would consist simply of an act of the President not requiring any financial outlay other than the regular appropriations for the President and his office.

Act Section 2-(a)-(10)—Ordinance Section 1-(10) provides that foreign affairs shall be under the direct supervision and control of the United States. The exercise of this control would of course be by the State Department and other departments or agencies of the United States and would be and are paid for under the regular appropriation acts out of the general fund of the Treasury. The proceeds of the coconut oil tax are not made available for the cost of this control.

Act Section 2-(a)-(12)—Ordinance Section 1-(12) requires that the Philippine Islands recognize the right of the United States to expropriate property for public uses, to maintain military and other reservations and armed forces in the Philippines, and, upon order of the President of the United States, to call into the service of such armed

forces all military forces organized by the government of the Commonwealth of the Philippines.

Certainly the United States would pay out of its own funds for property which it took for its military establishments and the expenses of its own military forces. In so far as the Philippine government may be required to finance the service of its own armed forces, there is nothing to indicate or require that the coconut oil fund is to be or may be drawn upon for that purpose.

Act Section 2-(a)-(13)—Ordinance Section 1-(13) provides that certain decisions of the courts of the Philippines shall be subject to review by the Supreme Court of the United States as now provided by law, and such review shall also extend to all cases involving the Constitution of the Philippines. Naturally the financing of this judicial authority would come from the United States Treasury and appropriations for this Court.

Act Section 2-(a)-(14)—Ordinance Section 1-(15) provides that the United States may, by presidential proclamation, exercise the right to intervene for the preservation of the government of the Philippines and for the maintenance of that government as provided in that government's constitution, and for the protection of life, property and individual liberty and for the discharge of the government's obligations under and in accordance with the provisions of the Philippine constitution.

Certainly if the United States should have occasion to exercise this right of intervention, it would do so through its own officials, departments, military and naval establishments, all of which would be paid for out of the congressional appropriations for these officials, departments and establishments and from the Treasury of the United States. At any rate the Revenue Act of 1934 does not reserve any right to pay for such intervention out of the coconut oil proceeds.

Act Section 2-(a)-(15)—Ordinance Section 1-(16) provides that the United States may appoint a United States

High Commissioner to the government of the Philippine Commonwealth. The section provides that said Commissioner shall be recognized. This recognition is an act of the Philippine government and involves no expense to the United States, and the Independence Act expressly specifies that the salary and expenses of the Commissioner and his staff shall be paid by the United States, and this cost is included in the regular general appropriation acts of Congress.

Act Section 2-(b)-(1) provides that the property rights of the United States and the Philippine Islands shall be promptly adjusted and settled and existing property rights of citizens or corporations of the United States in the Philippines shall be safeguarded. In so far as activity of agents of the United States are necessary in the process of this adjustment or safeguarding, naturally they would be paid by the United States out of its own revenues and appropriations for that purpose.

Act Section 6—Ordinance Section 1-(5) specifies the quotas of certain Philippine products coming into the United States which are to remain free from customs duties and, as to the amounts above the quotas, fixes the same rates of duties as are imposed upon like articles from foreign countries. Of course, any expense connected with the levying or collection of such duties comes out of the regular appropriations to the Treasury Department or customs offices and from the United States Treasury. The section contains provisions requiring the Philippine Commonwealth to pay all the debts of the Philippine Islands and its subdivisions; thus exempting the United States from those obligations.

Act Section 7-(1)—Ordinance Section 1-(18) provides that amendments to the constitution of the Philippine Commonwealth shall be submitted to the President of the United States for approval. This may require action by the Presi-

dent, which, so far as it involves an expense, would come out of the appropriations for the President and his office.

The same is true of Act Section 7-(2) [Ordinance Section 1-(19)] which authorizes the President of the United States to suspend the taking effect of any law, contract or executive order of the Philippines which in his judgment will result in failure of the Philippine Commonwealth to meet its contracts and indebtedness.

Act Section 7-(4)—Ordinance Section 1-(16) deals with the United States High Commissioner to the Government of the Philippine Commonwealth, who is given powers to see to it that the Philippine government complies with the obligations assumed in the Independence Act. The President is authorized to enforce these obligations through seizure of the Philippine customs, obviously a fund entirely other than the coconut oil tax fund. There is the express provision that the compensation of the Commissioner and of his staff and assistants shall be such as "may be appropriated for by Congress," which obviously contemplates that this expense is to be taken from the United States Treasury and negatives any intention to use the coconut oil proceeds for the purpose.

This completes the list of the powers and responsibilities reserved to the United States, and the Independence Act will be searched in vain for the discovery of any power or responsibility of the United States which is to be or will be financed by the transmission of the coconut oil tax proceeds into the Philippine treasury. There is nothing in the Philippine coconut oil provisions of the Revenue Act of 1934 which requires the Philippine Commonwealth to use a penny of these proceeds for the financing of the exercise by the United States Government or any of its officials or departments of the aforesaid powers reserved by the United States or of the responsibilities of the United States or any of them; and that Commonwealth, acting through its own

legislature and executive departments, may do what it pleases with the money and presumably will use it in the financing of its exercise of its own powers of self-government, that is, for the purposes and in the fields in which it has independent powers and uncontrolled discretion.

The result is that the petitioner and other manufacturers in the United States who use Philippine coconut oil in the manufacture of their products are required by Section 602½ of the Revenue Act of 1934 to pay into the Philippine treasury moneys with which to finance the exercise by the Philippine government of its own powers of self-government and not for the financing of any matter for which the United States has any responsibility, duty or obligation, or over which the United States has any control or exercises any of its powers.

If the purpose of Congress had been to finance the duties and responsibilities of the United States within or to the Philippines, then the laying of the tax for payment into the Philippine treasury, without any control over the expenditure or any specification or itemization of what was to be done with the money, that is, without anything in the nature of an appropriation of the money by Congress itself, as distinguished from a mere direction that it be transferred to the Philippine treasury, would fall afoul of the constitutional principle that Congress cannot delegate its legislative powers. The determination of the purpose and activities for which tax levies are to be made and collected and the proceeds expended is a legislative province, and Congress cannot delegate that determination to the Philippine legislature or to any body.

Knickerbocker Ice Co. v. *Stewart*, 253 U. S. 149, was concerned with an Act of Congress making the workmen's compensation laws of states applicable to injuries sustained in maritime work. This Court held this to be an invalid delegation of Congress' legislative discretion, saying (p. 164):

". . . The subject was intrusted to it, to be dealt with according to its discretion,—not for delegation to others. To say that because Congress could have enacted a compensation act applicable to maritime injuries, it could authorize the states to do so, as they might desire, is false reasoning. . . .

"Congress cannot transfer its legislative power to the states,—by nature this is nondelegable."

Analogously, certainly, Congress could not delegate to the Philippine legislature the determination of the purposes for which United States revenues are to be expended.

(e) The group of statutes cited by the Government's attorneys.

The Government's attorneys cite a group of statutes which they claim to be precedents for the provisions of the Act of 1934 with which this case is concerned, namely: Act of March 8, 1902, c. 140, 32 Stat. 54, Sec. 4 (U. S. C., Title 19, Sec. 123[a]); Act of August 5, 1909, c. 6, 36 Stat. 11, 84-85; Act of October 3, 1913, c. 16, 38 Stat. 114, 193; Act of September 21, 1922, c. 356, 42 Stat. 858, 935; Act of June 17, 1930, c. 497, 46 Stat. 590, 686.

Previous to American possession, an export tax on all products exported from the Philippines prevailed. As early as 1901 Congress prohibited an imposition of export taxes so far as exports to the United States were concerned. From the time of the beginning of the American occupation in 1898 down to about the end of 1901, regular American tariff duties were collected on Philippine imports. This was stopped by the decision of this Court in the *Diamond Rings Case*. Then Congress enacted the 1902 Act (the first of the above statutes cited by the Government), which Act was called "An Act to temporarily provide for revenues for the Islands." It provided that there shall be collected on all articles coming into the Philippine Islands

from the United States the rates of duties upon like articles imported from foreign countries; and that upon all articles coming into the United States from the Philippine Islands there shall be collected the same rates of duties which are collected upon like articles from foreign countries, except that on articles the growth or product of the Philippine Islands only 75% of such duties shall be collected. Then the statute proceeded:

> "All duties and taxes collected in the Philippine Islands in pursuance of this Act and all duties and taxes collected in the United States upon articles coming from the Philippine Islands and upon foreign vessels coming therefrom, shall not be covered into the general fund of the treasury of the United States, but shall be held as a separate fund to be paid into the treasury of the Philippine Islands to be used and expended for the government of said Islands."

It will be noted that the taxes levied were designated as duties upon articles coming into the United States from the Philippine Islands, and such articles were given the benefit of a 25% reduction in duties as compared with foreign countries. Obviously, and indeed as was pointed out in *Dorr* v. *United States* (supra), this statute was an exercise of the power of Congress as the governing body of the Philippine Islands, and the provision for placing the proceeds of the duties, as they were called, in the Philippine Treasury was a logical consequence of and possibly a constitutional necessity from the decisions in *Downes* v. *Bidwell*, the *Diamond Rings Case* and the subsequent insular cases.

The 1909 statute, the second of the statutes referred to by the Government's attorneys, was the Payne-Aldrich tariff bill, which, so far as the exactions denominated customs duties were concerned, almost established free trade between the United States and the Philippines. This Act also provided that

> "there shall be levied in the United States upon articles . . . *coming into* the United States from the Philippine Islands, a tax *equal to* the internal revenue tax imposed in the United States upon like articles of domestic manufacture . . . and there shall be levied . . . in the Philippine Islands upon articles from the United States a tax equal to the internal revenue imposed in the Philippine Islands upon like articles of Philippine manufacture." (Italics ours.)

The articles referred to are those types of articles on which United States internal revenue taxes are imposed (liquors, cigars, etc.), and, in the case of the Philippines, these articles have consisted almost entirely of cigars and tobacco. This 1909 statute then proceeded to provide that

> "from and after the passage of this Act all internal revenues collected in *or for the account of the Philippine Islands* shall accrue intact to the general government thereof and be paid into the insular treasury and shall be allotted and paid out thereof in accordance with the future acts of the Philippine legislature, subject, however, to Section 7 of the Act of Congress of July 1, 1902, and provided further that until action by the Philippine Islands legislature approved by Congress, internal revenues paid into the insular treasury as hereinbefore provided shall be allotted and paid out by the Philippine Commission." (Italics ours.)

This was the period of the Philippine Commission and before the 1916 Act which first established an autonomous government. Note that the taxes "equal to" internal revenue taxes were to be collected on articles "coming in" to the United States "for the account of the Philippine Islands." These provisions obviously adhere to the concept developed and determined in *Downes* v. *Bidwell* and the subsequent cases dealing with the Philippines, that taxes upon the import of Philippine products are levied and collected in the exercise of the power of the United States

as the governing body of the Philippine Islands, and derive their validity from that power and not from the taxation provisions of the Constitution.

The next of the cited statutes is the 1913 statute, which was the Underwood Tariff Act, which abolished such quota limitations as had been retained in the Payne-Aldrich Act of 1909, and repeated the provisions for imposition of taxes in the United States upon articles coming into the United States from the Philippine Islands equal to the internal revenue taxes imposed in the United States upon like articles made in the United States, and likewise with an analogous provision for a tax measured by the Philippine tax upon like articles imported into the Philippines from the United States. This 1913 statute contained the same provisions that

> "all internal revenues collected in or for the account of the Philippine Islands shall accrue intact to the general government thereof and be paid into the insular treasury."

The next of the cited statutes is the Tariff Act of 1922 (the Fordney-McCumber Tariff Act), which continued, substantially without change, the provisions of the 1909 and 1913 tariff statutes as above-described. This is also true of the 1930 statute, namely the Smoot Hawley Tariff Act, which retained the two policies embodied in the previous Act, namely free trade so far as the taxes designated as duties are concerned, and that, on articles "coming into the United States," there is to be collected taxes "equal to" the United States internal revenue taxes on like articles and "for the account of the Philippine Islands." The section of the 1930 Tariff Act dealing with the Philippine Islands, namely Section 301 of the Act of June 17, 1930 (C. 497, Title III, 46 Stat. 685), is Section 1301 of the U. S. Code, Title 19, Subtitle III, Part I, which, for con-

venience in verifying and examining the phraseology used in the provisions of these tariff statutes relating to the Philippine Islands; will be found set forth in full in the Appendix, p. 41.

In language identical with the provisions of the earlier tariff acts, the 1930 statute expressly treats these taxes as "*collected for account of the Philippine Islands.*" Significantly, the Philippine products which are subjected to this tax are expressly exempted from any internal revenue tax levied by the Philippine government.

It is quite obvious that these taxes levied on Philippine articles in the group of statutes cited by the Government's attorneys, are import taxes, and not internal taxes. They are measured by the internal revenue taxes on like articles manufactured in the United States, but they are levied upon the "*coming into the United States*" from the Philippines. The provisions levying these taxes have always been placed exclusively in tariff statutes and never in any internal revenue statute.

That this is the nature of these taxes is further demonstrated by the fact that the regulations relating to the collection of the tax have been included in the customs regulations and not in the internal revenue regulations. See *Article 259 and Article 501 of Chapter 9 of the Customs Regulations of 1931.* They are paid by means of internal revenue stamps, but the articles remain in the custody or control of the customs officers and are not released to the consignee or importer unless and until the stamps are affixed. Usually the stamps are affixed in the Philippine Islands before the exportation. The *Treasury Department Combined Statement of Receipts and Expenditures Balances, etc., of the United States, Fiscal Year ending June 30, 1934, page 71,* shows that the amounts of these taxes paid by stamps affixed in the Philippine Islands was $464,289.87, whereas the amount affixed after the arrival in the

United States was $9,891.98. It is noteworthy that in this report of the Treasury Department these are designated "Philippine Islands Revenues," whereas another sum which appears on the same page is referred to as "United States Revenues." Where articles arrive without the stamps, the customs regulations specify the procedure whereby the affixing of the stamps is required before the articles will be released by the customs department. The procedure is that the customs officials issue a form known as No. 923, which is a request to the Internal Revenue Bureau to sell to the consignee the necessary stamps. The consignee then goes to an internal revenue office, presents this request and purchases the necessary stamps and takes them back to the customs office, where they are affixed to the article. If the consignee fails to call for his article or produce the necessary revenue stamps, then, after the designated period, the customs department sells the article for at least the amount of the tax or the purchaser at the sale affixes the tax stamps. Where the articles are shipped by parcel post, the same procedure is followed. namely that the customs department issues form 923 requesting sale to the consignee of the necessary revenue stamps and the postmaster does not release the articles to the consignee until, in accordance with the orders of the customs officials, the stamps shall have been affixed. The internal revenue officers have no part in the procedure other than that of selling the stamps upon the formal requests of the customs officers; excepting that, in the very rare circumstances that the consignee fails to purchase the stamps and take out his articles and the customs department finds that it cannot sell the articles to a purchaser who will affix the stamps or for the amount of the stamps, then the customs department asks the internal revenue department as to its desires concerning the disposition of the articles. As provided in the statutes under discussion and

as we have seen in the above cited report of the Treasury Department, all of the proceeds of the sales of the stamps, whether such sales, as is generally the case, occurred in the Philippine Islands or, in a small proportion of the imports, the sale and affixing of the stamps occur while the articles are in the custody or control of the customs officials, are deemed collected "for account of the Philippine Islands," and are not treated as United States revenues.

It is therefore perfectly plain that, though measured by the amount of internal revenue taxes on like articles made within the United States, these taxes on Philippine products exported from the Philippines into the United States, are exactly of the nature of the taxes which were sustained in *Downes* v. *Bidwell* (supra), not as an exercise of the taxing power under the taxation and revenue clauses of the Constitution, but as an exercise of the power of Congress to legislate for and over the Philippine Islands, and, that the statement in these tariff acts that these taxes are collected for the account of the Philippine Islands and shall be paid over to the government of those Islands, is a logical consequence of and in full conformity with the decision of this Court in *Downes* v. *Bidwell* (supra) and in the reaffirmations and interpretations thereof in *Dorr* v. *United States* (supra) and subsequent cases.

So these Philippine provisions of the Tariff Acts cited by the Government's attorneys are not precedents for the processing taxes imposed in the Revenue Act of 1934 on the use of Philippine coconut oil in purely internal manufacturing operations within the United States; quite the contrary. The *Report of the Special Investigation Commission* which President Harding sent to the Philippine Islands in 1921, states:

> "The Philippine Islands, contrary to general belief, have maintained all the expenses of civil administration since the beginning of American occupation *from in-*

sular revenues and without assistance from the Treasury of the United States. . . ." (Italics ours.)

At the time this statement was made, two of the tariff statutes cited by the Government's attorneys, namely the 1909 and 1913 statutes, had been in full force and effect. Obviously, the taxes imposed in those acts on Philippine products imported into the United States were not United States revenues, but insular revenues, and the transmission of the proceeds thereof to the Philippine Islands was not from the Treasury of the United States. That statement was correct, and the same statement made today, after the 1922 and 1930 tariff acts, would be wholly correct. The Philippine coconut oil provisions of the Revenue Act of 1934 which are before this Court in this instant case constitute the first attempt ever made to tax persons or transactions within the United States for the Philippine treasury or government.

The Philippine coconut oil provisions of the Act of 1934 were not, therefore, within the scope and meaning of the taxing powers of Congress as granted in Clause 1 of Section 8 of Article I of the Constitution. The said provisions of the Act of 1934 place a burdensome imposition on one group of the citizenry of the United States for payment exclusively into the treasury of and within the unconditional control of a government which is not the government of the United States and which is the government of a locality which was not a part of the United States.

II.

The Philippine coconut oil provisions of Revenue Act of 1934 violate the Fifth Amendment.

The Philippine coconut oil provisions of Section 602½ of the Revenue Act of 1934 place upon a group of American

manufacturers who use Philippine coconut oil an arbitrary and heavy burden, for a purpose which is not only outside the scope of the federal taxing power, but is one with which the group selected to bear the burden has not such relationship as gives the selection an iota of reasonableness or the imposition an iota of reasonableness; and for this reason they violate the due process of law clause of the Fifth Amendment.

There have been expressions in court opinions to the effect that the due process of law clause of the Fifth Amendment is not applicable to tax laws. We believe, however, that any such statement is too absolute and too sweeping, and that, beyond and in addition to the invalidity of a purported exercise of the taxing power by reason of its being beyond the scope of that power as granted by the Constitution, its invalidity may be produced or strengthened, so to speak, by the prohibitions of the Fifth Amendment.

In Brushaber v. *Union Pacific Railroad Co.*, 240 U. S. 1, this Court held that while the due process clause of the Fifth Amendment is not a limitation upon the taxing power of Congress, in other words, that the Constitution does not conflict with itself by conferring a taxing power, on the one hand, and taking the same power away, on the other hand, by the provisions of the due process clause, nevertheless, in the words of the opinion (pages 24-25):

> "... this doctrine would have no application in a case where, although there was a seeming exercise of the taxing power, the act complained of was so arbitrary as to constrain to the conclusion that it was not the exertion of taxation, but a confiscation of property; that is, a taking of the same in violation of the Fifth Amendment; *or, what is equivalent thereto, was so wanting in basis for classification as to produce such a gross and patent inequality as to inevitably lead to the same conclusion.*" (Italics ours.)

This quotation applies to the Philippine coconut oil tax. To pick upon one group of American manufacturers for an enforced, large and burdensome contribution into the Philippine treasury is grossly and patently arbitrary.

1 Willoughby on the Constitution, p. 584, states:

> "Though the taking of the property in the form of a tax is thus not in itself a taking without due process, it may become such by reason of the purpose for which . . . the tax is levied, assessed and collected."

We do not claim, of course, that the excessiveness or burdensome or even ruinous effect of a tax is, in and of itself, a decisive factor of invalidity. What we desire to lay before the Court is that one group of the population is selected as the victim of an exceedingly burdensome, indeed, in the case of plaintiff, a ruinous tax burden, for a purpose entirely distinct from and which has nothing to do with the support of the government of the United States, and has no relationship whatever to any direct or any special benefits to the group required to make the contribution; and that this produces that degree of arbitrariness and, in the above-quoted language of this Court, that gross and patent inequality from which the Fifth Amendment is intended to protect.

The Government's attorneys argued below that the American processors of coconut oil are the proper subject of a tax for the Philippine treasury as they are the beneficiaries of the payment into the Philippine treasury because the coconut oil, which is important to the business of those processors, is produced in the Philippine Islands. On its face, this contention is so far-fetched as to seem unworthy of comment or analysis.

Coconut is not even the chief agricultural product of the Philippine Islands. In its volume or value it is enormously

exceeded by both rice and sugar, and indeed in 1934, the year in which the statutory provisions under discussion were enacted, coconuts constitute but 7.7% of the agricultural products of the Islands. Furthermore, a considerable portion of the coconut crops is used by the Philippine people themselves or sent to other countries than the United States. Besides, the economic activities of the Philippine people is by no means restricted to agriculture, but include manufacturing, mining, lumbering and all the various kinds of civic, professional, cultural, trade and the many other activities in which a nation of 13,000,000 people naturally engage. Furthermore, coconut oil and other coconut products do not constitute by far all of the imports of the United States from the Philippine Islands; indeed, it is not the chief import, the chief import being sugar.[1]

These facts show how arbitrary, unreasonable, unfair, discriminatory, and therefore violative of the intention of the Fifth Amendment, are the Philippine coconut oil provisions of the Revenue Act of 1934 which exact exclusively from the group of American manufacturers who happen to use Philippine coconut oil, the entire fund of which is to be transmitted to the Philippine treasury.

If a tax on the use of an imported material for the treasury of the government of the country in which that material was originally grown could be sustained on the theory that the domestic users of that material benefit by the increased amount in the treasury of that government, then a tax, for instance, on American shoemakers who use Argentine hides, the proceeds to go to the Argentine treasury, would be constitutional; or, to take an illustration from the oils which are mentioned in Section 602½ of the Reve-

[1] Detailed statistics and discussions of Philippine economic and United States-Philippine trade will be found in United States Tariff Commission Report No. 118, Second Series, on United States-Philippine Trade, and in Chapters 3 and 4 of a book entitled "Philippine Independence" by Grayson L. Kirk (1936).

nue Act of 1934, a tax on American manufacturers who use palm oil, the proceeds to go to the government of the Netherlands from wh[illegible]e possessions palm oil comes, would become constitutional. The theory is obviously untenable.

Besides, the Philippine legislature is free to expend the moneys for purposes which have not the remotest relation to coconuts or its products or even for purposes harmful to American processors.

The conclusive and inescapable fallaciousness of the Government's contention in regard to the Philippine coconut oil provisions of the Revenue Act of 1934, is that those provisions themselves prohibit the use of the money for the benefit of the Philippine coconut growers. The very purpose and intention of those provisions was to harm the Philippine-United States coconut oil trade, which means to harm every link in the chain of that trade from the Philippine coconut grower to and through the dealers, importers, processors and beyond. Injury to the Philippine coconut oil growers and to the American users of that oil was the purpose of the tax, a purpose which will no doubt be increasingly and progressively accomplished if those provisions be permitted to remain in effect. They certainly had an excessively damaging effect upon the petitioner, and no doubt upon other processors; and the paying of the proceeds of the tax into the Philippine treasury can be of no help or compensation to the petitioner or its fellow contributors to those proceeds.

III.

The provisions levying the tax and the provisions placing the proceeds in the Philippine treasury are not separable.

The attorneys for the Government contended below that the provisions of Section 602½ of the Revenue Act of 1934 which imposed 3 cents a pound on the domestic processing

of coconut oil and the provisions which specified what shall be done with the proceeds of the tax are so separable, that the latter can be utterly eliminated and ignored and the former sustained as simply a levy of a tax.

For convenience it would be well to set out here again the statutory provisions in question:

> *Section 602½ (a)*—
>
> "There is hereby imposed upon the first domestic processing of coconut oil . . . a tax of 3 cents per pound, to be paid by the processor. . . . All taxes collected under this section with respect to coconut oil wholly of Philippine production or produced from materials wholly of Philippine growth or production, shall be held as a separate fund and paid to the Treasury of the Philippine Islands, but if at any time the Philippine Government provides by any law for any subsidy to be paid to the producers of copra, coconut oil, or allied products, no further payments to the Philippine Treasury shall be made under this subsection."
>
> . . . . . .
>
> "(g) All collections except as provided in subsection (a) under this section shall, notwithstanding any other provisions of law, be covered into the general fund of the Treasury of the United States."

From the face of these provisions, it is quite obvious that the part regarding the imposition and the part regarding the collections and the payment thereof into the Philippine treasury are so intertwined and integrally related, are so much the parts of one unitary whole, that separation would inevitably destroy the legislative intent as expressed in the statute itself and, in the language of the opinion in *Railroad Retirement Board* v. *Alton R. R. Co.*, 295 U. S. 330, would produce "an effect altogether different from that sought by the measure viewed as a whole." This is corroborated by the history of these provisions, which history demonstrates beyond any doubt that Congress would not have included the levy in the Revenue Act of 1934 with-

out attaching thereto provision for transmitting the collections to the Philippine treasury.

In the Appendix, pages 51 to 55, the legislative stages of Sections 602 and 602½ are set forth with the phraseology of the relevant provisions of those sections at the different stages.

The hearings of the Ways and Means Committee preceded the introduction of the bill in the House, and evidently those hearings were upon a draft prepared by the Treasury Department and the heads of the House and Senate Committees. It contained no section whatever on oil processing taxes, and such a section was first produced by the representatives of the dairy and other interests who were producers of domestic fats and oils. The Committee incorporated that section into the draft of the bill as Section 602, which provided for processing taxes on various oils, including coconut oil, but contained no reference to or special provisions concerning Philippine coconut oil. Subsection (g) of said Section 602 specified that "all collections under this section shall, notwithstanding any other provision of law, be covered into the general fund of the Treasury of the United States." Up to the time when, as will be presently described, the Senate inserted the amendment for the payment of the coconut oil tax on Philippine coconut oil into the Philippine treasury, this subsection (g) remained as above quoted. When the amendment regarding payment of the collections into the Philippine treasury came later to be made, then an adjusting amendment was placed in subsection (g), which then came to read: "*All collections, except as provided in subsection (a) under this section* shall, notwithstanding any other provisions of law, be covered into the general fund of the Treasury of the United States." (Italics ours.)

The Philippine Independence bill was pending at the same time. All of the matters to be covered by that bill

had been practically agreed upon between the President and the others who represented the United States in negotiations and the representatives of the Philippine Islands, excepting only the matter of United States military reservations and naval bases in the Philippines. One of the settled matters was that of the quota of Philippine coconut oil imports which were to be admitted free of duty during the period from the enactment of the Independence Act and the grant of complete independence. This quota was fixed at 200,000 long tons or 448,000,000 pounds, which was an amount somewhat larger than the then amount of annual importation though considerably less than the amount of importation during the preceding period of prosperity. This quota provision is Section 6-(b) of the Independence Act and will be found on page 22 of the Appendix. The 1934 Revenue bill was still pending in its original form at the time the Philippine Independence Act was passed and accepted by the people of the Philippine Islands. This accentuated the fact that Section 602 as passed by the House and pending in the Senate would be a breach of faith on the part of the United States, a breach of the intention and spirit of the agreement between the United States and the Philippine people embodied in the Independence Act.

The Senate Committee on Finance made some amendments, but none which contained any mention or reference to Philippine coconut oil.

When the bill reached the Senate floor, the opposition to taxing Philippine coconut oil became keener, and almost at the beginning of the discussion Senator Harrison expressed his belief that President Roosevelt would veto the entire revenue act if that tax remained in the measure, and he read to the Senate a letter written to him by President Roosevelt, which said:

> "I am advised that H. R. 7835, the revenue bill, now under consideration before your committee, con-

tains a provision imposing an excise tax on coconut oil.

Now that the Philippine independence bill has been approved, and insofar as the United States is concerned represents definite commitments to the government and the people of the Philippine Islands, the provisions of Section 6 will govern future trade relations with the Islands. Paragraph (b) of this section contemplates that there shall be no restriction placed upon Philippine coconut oil and copra coming into the United Sfates until after the inauguration of the government of the Commonwealth of the Philippine Islands. It is my view that the imposition of an excise tax on coconut oil would be a violation of the spirit of this section of the independence act, and that such provision should be eliminated from the revenue bill.

May I respectfully suggest that your committee be advised of the language which I used in regard to the economic phase of the independence bill in my recent message to the Congress."

Congressional Record 73 Congress, Second Session, Vol. 78, Part 6, p. 6317.

At the same time Senator Harrison stated to the Senate that he had also received letters from the Secretary of State and the Secretary of War disapproving any such tax on Philippine coconut oil. It was subsequent to the disclosure of these letters and subsequent to a bitter opposition to the tax expressed on the floor of the Senate, that Senator Norris introduced the amendment to Section 602 (there was as yet no 602½) which provided that the entire collections on Philippine coconut oil shall not go into the United States Treasury but shall be paid over bodily to the Philippine treasury, and that such transmission to the Philippine treasury shall terminate if and when any subsidy should come to be granted by the Philippine government to producers of the oil. Senator Norris' amendment was adopted by the Senate and constitutes the very provisions with which this instant case is concerned. In supporting

his amendment, Senator Norris said—"We shall have not taken a penny of the money ourselves."

The House refused to concur in this amendment and the bill was sent to a conference committee, which committee retained the amendment. The report of the conference committee will be found in Vol. 78, Congressional Record (73rd Congress, 2nd Session), p. 7815, and the introduction of the Norris Amendment in the same volume, Part 6, p. 6380. The discussion in the Senate, including Senator Norris' explanation of the amendment, will be found in the same volume, pp. 6308-6325, 6380-6389, and significant portions thereof have been set forth in the Appendix, p. 43. It was quite apparent that a tax on Philippine coconut oil could not pass without that amendment; so the House accepted the conference committee report.

No one could read the legislative history of this bill without becoming convinced beyond a doubt that a tax on the processing of Philippine coconut oil for United States revenue would have had no chance of passage by Congress. It would be impossible to find legislation more integrated and inseparable in purpose and intent than are the provisions of Section 602½ of the Revenue Act of 1934 relating to the processing tax on Philippine coconut oil and the disposition of the proceeds thereof. The legislative history of the bill corroborates what is apparent upon the face of the measure, that the levy and collection of the tax *for the Philippine treasury* were parts of an integral, inseparable whole.

The expressed purpose of an exercise of the taxing power is one of the decisive factors in the determination of its constitutional validity. In James M. Gray's "Limitations of Taxing Power and Public Indebtedness," page 347, the author says:

> ". . . It may also be said that the purpose of the taxing, whether public or not, and hence whether 'for

> the common defence and general welfare,' is to be determined by inquiring as to the use to which the proceeds of the tax are put; . . ."

Any and every tax or imposition, when collected, produces moneys. It is always physically possible to take a pair of scissors and cut out every portion of a statute which has to do with the purpose of the tax and the use of its proceeds, and there will always remain a provision which, if enforced, will produce money. If that were the test, there would seldom, if ever, be a case in which a court would consider the purpose or objective of the tax as bearing on its validity. But courts constantly entertain and decide issues as to the effect of the purpose of the tax or use of its proceeds upon the validity thereof, as illustrated by cases on bounties or subsidies or the bank note or child labor tax cases or state legislation levying taxes for railroad aid or aid to manufacturing establishments. The test is, of course, not the physical separability of the words of the statute which make the imposition from the words which state the purpose of the imposition or what is to be done with the proceeds. The test is whether the exaction and the expressed purpose thereof are integral parts of a unitary legislative plan and of a connected legislative intention.

The same contention of separability was advanced by the Government in the case of *U. S.* v. *Butler*, 297 U. S. 1 (p. 58), and overruled by this Court in these words:

> ". . . The Government in substance and effect asks us to separate the Agricultural Adjustment Act into two statutes, the one levying an excise on processors of certain commodities, the other appropriating the public moneys independently of the first. Passing the novel suggestion that two statutes enacted as parts of a single scheme should be tested as if they were distinct and unrelated, we think the legislation now before

> us is not susceptible of such separation and treatment. The tax can only be sustained by ignoring the avowed purpose and operation of the act, and holding it a measure merely laying an excise upon processors to raise revenue for the support of government."

The dissenting opinion in the Butler case did not separate the levying provisions from the expenditure provisions and save the former by throwing out the latter. It recognized them as a single plan and deemed the whole plan to be constitutional.

Every word of the above quotation from the Butler case is applicable here. This Court could not sustain the levy and ignore the transmission of the proceeds to the Philippine treasury without holding that the provisions of Section 602½ relating to Philippine coconut oil constitute a measure for collecting money for the financing of the activities of the United States government, which would fly in the face of the fact that Congress expressly provided that not one penny shall be used for the support of the United States government or by the United States government.

The Revenue Act of 1934 provided for many kinds of taxes on many kinds of subjects of taxation, but contains no provisions for sending the proceeds other than to the General Treasury, excepting only the provisions relating to Philippine coconut oil. Congress knew what it was doing. It was not raising revenue for the support of the United States or the financing of the activities of the government of the United States when it imposed this levy upon Philippine coconut oil. It did not want to collect revenue for the United States from Philippine coconut oil for the reason that such a desire would intensify the violation of the intention and spirit of the Philippine Independence Act which had just been put into effect by the acceptance thereof by the people of the Philippine Islands. The government's claim of separability is tantamount to asking this Court

to enforce a greater breach of the honor of the United States than Congress was willing to commit.

The Government's attorneys, in their argument below, calling attention to the provision that the transmission of the moneys to the Philippine treasury shall cease if and when the Philippine government subsidizes the producers of coconut oil, contended that in such an event the tax will still be collected and would then be valid as a simple excise tax for revenue available for ordinary expenditures for the activities of the United States Government.

A complete answer to this contention is that the Philippine Commonwealth has not granted any such subsidy and the refund sought in this instant case is of a payment which necessarily antedated any such subsidy. In its more general aspects, however, the contention is completely erroneous. There is no provision in the Act specifying that, in case the Philippine Commonwealth grants said subsidy, thenceforth the collections on Philippine coconut oil shall be covered into the general fund of the United States treasury and be available for appropriations made by Congress. If the transmission to the Philippine government should terminate by reason of a Philippine subsidy to coconut growers, the proceeds of the tax collected thereafter would not, under the phraseology of the Act of 1934, necessarily go into the United States Treasury. A new act of Congress would be required for the disposition of those proceeds. When, therefore, the Government asks this Court to cut out from the statute the vital provisions regarding the transmission of the moneys to the Philippine treasury, it is asking this Court not only to drop out words which are now in the statute but to insert something into the statute which is not now there. That something requires a legislative, not a judicial, act.

The Government's attorneys ask the Court to assume that Congress, when faced with the necessity of determin-

ing this future legislative question, would decide in favor of the continued collection of the tax. There is not basis for any such assumption. We have seen that the provision for transmitting all collections to the Philippine treasury and prescribing that these collections shall not go into the United States Treasury were inserted when the President called the attention of Congress to the fact that the tax itself would be a breach of the spirit of the Philippine Independence Act. It was not within the power of the President to veto this particular feature of the Revenue Act; but immediately after the enactment of the statute; he wrote to Congress asking for repeal of all the provisions of the Act regarding Philippine coconut oil; and, if the unlikely event of Philippine subsidy to the coconut growers should come to be made, Congress is at least as likely to choose the repeal of the tax as to choose to violate the Independence Act without the palliating provisions for transmitting the proceeds to the Philippine treasury. At any rate, the validity of an existing statute cannot turn upon assumptions concerning a future statute not yet enacted; and certainly a court does not and would not take unto itself the legislative power to amend the existing statute and enact a different one; which is exactly what the Government's attorneys ask this Court to do when they contend that, if and when a Philippine subsidy to coconut growers terminates the transmission to the Philippine treasury of the moneys thereafter collected from the processing of Philippine coconut oil, those moneys will be sent into the general fund of the United States Treasury for use under general appropriation measures.

The Revenue Act of 1934 contains the conventional separability or saving clause. As has been frequently held by the courts, however, this savings clause decides no question of separability; for despite its presence in a statute, there still remains the question whether one part of the statute

is so completely unrelated, independent and distinct in the legislative intent from another part, that the court, when determining interpretation or validity, may utterly ignore the one part as though it did not exist.

A recent opinion of this Court defines the rules of construction as to the separability of one part of a statute from another part of the same statute, namely, in *Railroad Retirement Board* v. *Alton R. R. Co., 295 U. S. 330,* as follows:

> "The statute contains a section broadly declaring the intent that invalid provisions shall not operate to destroy the Act as a whole. Such a declaration provides a rule which may aid in determining the legislative intent, but it is not an inexorable command. It has the effect of reversing the presumption which would otherwise be indulged of an intent that unless the act operates as an entirety it shall be wholly ineffective, but notwithstanding the presumption in favor of divisibility which arises from the legislative declaration, *we cannot rewrite a statute and give it an effect altogether different from that sought by the measure viewed as a whole.* In this view we are confirmed by the petitioner's argument that as to some of the features we hold unenforcible it is 'unthinkable' and 'impossible' that the Congress would have created the compulsory pension system without them. They so affect the dominant aim of the whole statute as to carry it down with them.' " (Italics ours.)

The Government is asking this Court to do exactly that which this Court, in the foregoing quotation, stated a court should not do, namely, rewrite the Philippine coconut oil provisions of the 1934 Revenue Act so as to give an effect altogether different from that sought by those provisions viewed as a whole.

A decisive case on this question is *Hill* v. *Wallace, 259 U. S. 44,* which invalidated a federal statute purporting to tax contracts in grain futures. This Court pointed out that the part of the statute levying an excise tax on certain

classes of transactions might, in and of itself, be valid, but refused to consider that such a question was before the Court, which of course it would have been if the tax levy part of the statute could be separated from the rest of the statute. The statute contained the customary separability section.

The case of *Chicago Motor Club* v. *Kinney*, 329 Ill. 20, dealt with a statute imposing taxes on distributors of motor vehicle fuels. The statute apportioned the proceeds of the tax amongst various funds and purposes. The court found this apportionment to be unconstitutional; whereupon the state's attorneys set up the contention that, if these apportionment provisions be separated from the tax levy and other provisions, these latter could be upheld as valid in and of themselves. The Court rejected this contention, saying:

> "Eliminating from the Act the void sections 6, 7 and 10, we have an act which imposes a tax upon all distributors of all fuels suitable and practicable for operating motor vehicles, excepting kerosene, and places all of the fund in the state treasury known as the road fund. . . . Such an act is not the act that was passed by the General Assembly, and it is evident that the Act would not have been passed without Sections 6 and 10, where the different objects of an act are so dependent upon or so mutually connected with each other in meaning or as conditions, considerations or compensations for each other that it cannot be presumed the legislature would have enacted the provisions designed to secure one of the objects without the provisions for the other. The invalidity of the latter renders the whole act void."

There is no need to discuss the cases cited below by the Government; for in none of them was a statute levying a tax for an expressed purpose or use converted into a simple tax for revenue by the process of using the scissors and

cutting out those of the integral portions of the statute which provide for what the money is to be collected and where it is to go. We do not believe that any such case exists; nor, in the case of any statute which both levies a tax and specifies the purpose or use to which the entire proceeds are to be applied, can we conceive of any court's eliminating or ignoring the provisions concerning purpose or use and enforcing the levying provision. If the purpose or use be eliminated, then the tax would necessarily be collected either for a different purpose or use or for none at all. That would not be separating one part of the statute from another; that would be amending or destroying the measure.

IV.

The tax is not sustainable as a tax on imports of coconut oil from the Philippine Islands, for it is not an import tax.

The tax is not levied upon imports of coconut oil from the Philippine Islands nor collected upon imports nor from imports nor from importers. As stated in the petition and admitted by the Government's demurrer, some of the coconut oil imported from the Philippines is not processed in the United States and therefore not subject to this imposition. There is no collection at the places of import, and it is not the importation but the later use of some of the imported oil upon which the levy is imposed. Both the importation from the Philippine Islands and the interstate commerce in the oil are completely terminated before any processing begins. If any of the imported oil were lost or destroyed, there would be no tax on it. Here Congress was not engaged in laying any exaction upon imports, but upon the exclusively domestic transaction of using the oil in domestic manufacturing. The statute itself designates "*domestic processing*" as the subject of the tax.

That Congress knew the difference between an import tax and a processing tax and designed section 602½ of the 1934 Revenue Act to provide for processing taxes and not import taxes, is shown by the history of the provisions of Section 602 and 602½ of the Act as set forth in the Appendix, p. 51. The original section 602 dealt exclusively with processing taxes; not only on coconut oil but on several other classes of imported oils (sesame oil, palm oil, etc.). The settled policy not to levy the regular customs duties on Philippine products and the complications involved in levying customs duties on the other oils, were, no doubt, considerations which caused the dairy and other domestic oil interests who wrote the section and the Ways and Means Committee which adopted it to avoid using duties or import taxes.

In the course of the debates there was brought to the attention of Congress that there were certain other oils imported into the United States and competing with domestic oils to which such considerations or reasons were felt not to apply, as, for instance, whale oil, fish oil and marine animal oil. So, in the process of revamping the oil tax provisions, all of the taxes which were to be domestic processing taxes were placed in a section which came to be numbered section 602½, while under the original number 602 a tariff or customs duties were placed upon imported whale, fish and marine animal oils. The distinction between the two types of subjects, namely imports, on the one hand, and domestic processing, on the other, was carefully preserved by including in section 602 those oils on which an import tax was to be imposed and in section 602½ those on which a domestic processing tax was to be imposed.

Furthermore, if Section 602½ imposed an import duty on Philippine coconut oil, as said section was enacted by Congress after the enactment of the Philippine Independence Act, it would repeal Section 6-(b) of the Independence

Act, which fixes a quota below which Philippine coconut oil shall be free of duty. Certainly Congress intended no such result.

The processing taxes imposed by Section 602½-(a) of the Revenue Act of 1934 are not specified to be import taxes, are not intended to be import taxes and are not levied on imports.

V.

The tax is not sustainable as a regulation of foreign or Philippine-United States commerce.

The Government's attorneys argued below, that, even though not sustainable as a tax measure, the exaction on the use of Philippine coconut oil by the American manufacture of soap, oleomargarine and other domestic products, though such use occurs after the oil has ceased to be an article in foreign or interstate commerce, can be upheld as a regulation of foreign commerce or of commerce on the seas.

One question which naturally arises is whether the Philippine Islands are a foreign country and whether commerce between the Philippine Islands and the United States is foreign commerce within the foreign commerce provisions of the Constitution. The power to regulate Philippine-United States commerce is derivable, under the principles developed in the Insular Cases, from the war and treaty power to acquire territory and possessions, and possibly from the so-called territories clause, namely Section 3 of Article IV, of the Constitution. And our imagination has great difficulty in picturing the caldrons in a Dayton, Ohio, soap manufacturing plant as a part of the high seas.

But granting that Congress has power to regulate commerce between the Philippine Islands and the United States, there is and can be no validity whatever in the Government's argument that a tax on the use of a material

in a purely internal, indeed intrastate, manufacturing process is sustainable as an exercise of the regulation of commerce in that material even after all commerce in it has completely terminated.

A simple and complete answer to that contention is that the tax on the domestic use of Philippine coconut oil in domestic manufacturing, as imposed in Section 602½ of the Revenue Act of 1934, is not intended to be and is not a regulation of commerce between the Philippines and the United States.

In *Hill* v. *Wallace*, 259 U. S. 44, invalidating a statute taxing grain future contracts, the Government sought to advance the same argument that that statute, though entitled a tax statute and imposing what were designated as taxes, might be sustained as an exercise of the power to regulate interstate commerce. This Court rejected that contention, saying, amongst other things (p. 69):

> "A reading of the Act makes it quite clear that Congress sought to use the taxing power to give validity to the Act. It did not have the exercise of its power under the commerce clause in mind, and so did not introduce into the act the limitations which certainly would accompany and mark an exercise of the power under the latter clause."

As we have seen, the tax is not levied upon all coconut oil imported from the Philippines. As we have seen, Congress placed in section 602 its protective duties on certain imported oils, while in section 602½ it restricted itself to taxing a manufacturing process which does not and cannot begin until after all foreign and interstate commerce in the oil has completely ceased and terminated.

The Government's contention would wholly destroy all constitutional distinction between foreign and domestic commerce and between interstate commerce and intrastate production. The federal commerce power is necessarily

subject to those limitations which are implied in the words "foreign," "interstate" and "commerce," as well as to the express limitations specified in the Fifth and Tenth Amendments.

Of course, the imposition of a tax cannot find its constitutional basis as a mode of exercising the power of regulation unless the power of regulation itself exists, and, if the power of regulation itself exists, it may be exercised by any of the other modes by which regulation is exercised. If a transaction be within the scope of the regulatory power, then any and all the forms or modes of regulation may be used; but, if the transaction be not within the field of the regulatory power, then no form or mode of regulation, whether it be by taxes or other forms or modes, may be used. If the process of manufacturing soap is a subject matter falling within the scope of the federal commerce regulatory power, then regulation of the ingredients which may be used, of the labor which may be used and of every other part of the process would come within the field of federal legislative power to the same extent as would taxation as a mode of exercising that power; with the consequence that where taxation of a specific subject-matter could be sustained as an exercise of the regulatory power, the regulation of materials, labor and every other part of the same subject-matter would necessarily also fall within the scope of the same power. If, therefore, the taxation of the process of making soap or making oleomargarine could derive its validity from its being the exercise of the power to regulate, there would exist equally the power to regulate any of the materials to be used in that process or any of the labor to be used in that process or any other phase of the operations of that process.

Unless, therefore, everything that is concerned in the process of manufacturing soap, oleomargarine, etc., falls within the scope of the federal commerce regulatory power,

no tax of that process or any part thereof or the use of any material therein can derive its constitutional validity from the commerce power. Any definition of the commerce power which includes purely intrastate manufacturing, which cannot and does not begin until all foreign and interstate commerce is over, can have no validity without destroying all distinction between federal and state fields of action.

In *Second Employers' Liability Cases*, 223 U. S. 1, referring to the power to regulate interstate commerce, this Court said of the federal regulatory power (p. 47):

> "This power over commerce among the States so conferred upon Congress, is complete in itself, extends incidentally to every instrument and agent by which such commerce is carried on, may be exerted to its utmost extent over every part of such commerce, and is subject to no limitations save such as are prescribed by the Constitution. *But, of course, it does not extend to any matter or thing which does not have a real or substantial relation to some part of such commerce.*" (Italics ours.)

Similarly, in *Adair* v. *U. S.*, 208 U. S. 161 (p. 178):

> ". . . Manifestly any rule prescribed for the conduct of interstate commerce, in order to be within the competency of Congress under its power to regulate commerce of the states, must have some real or substantial relation to or connection with the commerce regulated . . ."

The use of an oil in the manufacturing within a state of a product such as soap or oleomargarine, which oil has entirely completed its foreign commerce stage and its interstate commerce stage, has arrived at and been stored in a receptacle owned by the manufacturer and constituting a part of his own plant and has been drawn out from that receptacle into the caldrons or other apparatus forming a

part of that plant, at which point the regulatory mandate or tax first begins to apply, cannot be foreign, interstate or any other commerce but is entirely an intrastate, non-commerce transaction.

See *Nashville etc. Railway Co.* v. *Wallace*, 288 U. S. 249, 265-8, concerning the validity of a tax imposed by the State of Tennessee on the storage of gasoline and the withdrawal of such stored gasoline for use or sale. The following are passages in which this Court stated the question and its decision thereon:

> "Appellant, an interstate rail carrier, purchases large quantities of gasoline outside the State of Tennessee and brings it into the state in tank cars, from which it is unloaded and placed in its own storage tanks. None of it is sold by appellant, but all is withdrawn and used by it as a source of motive power in interstate railway operation in Tennessee, Kentucky, Alabama and Georgia. Storage of the gasoline is a preliminary step to such use in interstate commerce. The tax is assailed both on the ground that it is imposed on the gasoline while still a subject of interstate commerce in the course of transportation from points of origin to points outside the state of Tennessee; and on the ground that it is in effect a tax upon the use of gasoline in appellant's business as an interstate carrier, and is thus an unconstitutional burden on interstate commerce.
>
> The gasoline, upon being unloaded and stored, ceased to be a subject of transportation in interstate commerce and lost its immunity as such from state taxation. . . . The oil in storage was not a subject of interstate commerce and so was a part of the common mass of goods within the state, subject to local taxation. . . ."

In that case much of the oil, when withdrawn from the Railway Company's storage tanks, would actually, still in its unused state, enter into interstate commerce; despite which this Court held the state had a right to tax the stor-

age and withdrawal from storage, as the oil was not a subject of interstate commerce while in the storage tanks or thereafter until it should actually again enter the stream of interstate commerce. In the case at bar, the coconut oil in petitioner's tanks or while in the course of being used in the manufacturing process in petitioner's manufacturing plant was certainly not an article of commerce subject to the commerce power.

The Government's attorneys point out that the power to regulate foreign commerce includes the power to determine what may be carried in foreign commerce, that is, what may be imported into the United States, and should therefore be held to include the lesser restraint on importation which is effected by means of a tax on the imported articles. If the point is claimed to demonstrate that the United States may regulate anything, however intrastate in nature, where the regulation thereof indirectly affects the amount of importation of articles from other countries, then its fallaciousness is certainly too obvious to require much examination. Just because the United States may exercise its commerce power for the purpose of reducing imports of designated articles, it does not follow that the United States may, for the same purpose, exercise a power which it does not possess. Its field of regulation is limited and terminates at the point where commerce, as interstate or foreign commerce, has terminated or is no longer directly involved. Quite probably a tax on the use of coconut oil in the soap manufacturer's caldrons in the process of making soap has a tendency to reduce the importation of that oil. The same would be equally true of a tax on the sale of that same soap. The same would be equally true of a tax upon the use of that same soap by the ultimate consumer. The same coconut oil which was in the storage tank and then in the caldron, will be in the soap when sold or the soap when used. The coconut oil is as completely beyond the course

of foreign commerce when it reaches the soap manufacturer's caldrons and as completely within the state and part of the mass of intrastate merchandise as it ever will be later. If the possibility of indirect effect on the volume of foreign commerce, as distinguished from the nature of the subject matter on which the regulation (or tax) is imposed, could be held to determine the definition of the scope of federal regulatory power, then the federal government could regulate any and every transaction, however local and intrastate may be its nature, which has to do with an article which contains any material originally imported.

But, more than that, if the power to regulate foreign commerce includes the power to regulate, by taxation or other modes, any intrastate manufacturing process which uses an imported article, then it would logically follow that the power to regulate interstate commerce includes the power to regulate, by taxation or other mode, any manufacturing process or other transaction within any state in which any material coming from any other state or states is used. As substantially all manufacturing or selling or other transactions, however intrastate or local they may be, use or are concerned with articles which contain ingredients or materials which come from either foreign countries or other states, or both, the result of such a process of reasoning would utterly destroy all constitutional limitations of the federal commerce power.

The Government's argument is effectively disposed of in the recent leading case of *Schechter* v. *United States,* 295 U. S. 495. That case was concerned with an attempted regulation of the slaughter of poultry in New York City. Certainly manufacturing soap is as intrastate as the slaughter of poultry. It was shown in that case that 96% of the poultry marketed in that city comes from states other than New York, and that three-fourths of these imports from other states were consigned to the commission

merchants who sell them to the slaughterers. In that case the Government advanced the same argument as it has done in the case at bar, seeking to justify the exercise of federal regulatory power by reason of the indirect effects which the regulation of the intrastate transactions has upon the volume or character of interstate commerce in the articles used, processed or sold in the intrastate transactions. As to this argument, this Court, speaking through Chief Justice Hughes, said (p. 546):

> ". . .In determining how far the Federal Government may go in controlling intrastate transactions upon the ground that they 'affect' interstate commerce, there is a necessary and well-established distinction between direct and indirect effects. The precise line can be drawn only as individual cases arise, but the distinction is clear in principle. Direct effects are illustrated by the railroad cases we have cited, as, e. g., the effect of failure to use prescribed safety appliances on railroads which are the highways of both interstate and intrastate commerce, injury to an employe engaged in interstate transportation by the negligence of an employe engaged in an intrastate movement, the fixing of rates for intrastate transportation which unjustly discriminate against interstate commerce. But where the effect of intrastate transactions upon interstate commerce is merely indirect, such transactions remain within the domain of State power. If the commerce clause were construed to reach all enterprises and transactions which could be said to have an indirect effect upon interstate commerce, the Federal authority would embrace practically all the activities of the people and the authority of the State over its domestic concerns would exist only by sufferance of the Federal Government. Indeed, on such a theory, even the development of the State's commercial facilities would be subject to Federal control. . . ."

If, as is unquestionable, the constitutional validity of a tax as a mode of the exercise of the power of regulation

requires that the subject matter be within the constitutional scope of the power of regulation, surely it is equally true that the mode itself, that is, the exercise of the taxing power, must be within the constitutional scope of the taxing power. An unconstitutional tax surely does not become constitutional by being used or claimed to be used as a mode of exercising some other power.

Certainly the power of the United States as the possessor of the Philippine Islands does not permit an invasion of the fields which are constitutional state fields. See *Kansas* v. *Colorado*, 206 U. S. 46.

VI.

The Philippine coconut oil provisions of Section 602½ of the Revenue Act of 1934 represent a plan for regulating intrastate manufacture of soaps and intrastate production of domestic oils.

Why did Congress wish to impose a heavy burden upon a group of American soap and other manufacturers and at the same time exclude the United States from any revenue therefrom? The statutory provisions contain on their face an indication of the answer to this question; for the provision terminating the transmission of the moneys to the Philippine Commonwealth, if and when that Commonwealth grants a subsidy to Philippine coconut oil producers, indicates that the purpose or objective of these provisions was the placing of Philippine coconut oil at a disadvantage as compared with competitive domestic products and thereby affecting the types of oil used by American soap and other manufacturers and the volume of oils produced in the United States or the prices at which they could be sold or both.

This indication from the face of the statute is completely verified by the legislative history of Section 602½ of the Revenue Act of 1934, which shows that the inclusion of

a tax on Philippine coconut oil was at the instance of the producers of certain domestic fats and oils, namely, lard, cottonseed oil, tallow, soybean oil, fish oil and butter. They sought and obtained the inclusion of the tax as a means whereby the parity which Congress had established in the Agricultural Adjustment Act for other agricultural products might be obtained for their domestically produced oils and fats.

As we have seen, there were no oil processing taxes in the revenue bill prepared by the Treasury Department, and by those who cooperated in its preparation. A provision for such taxes was first presented by the domestic oils and fats representatives at the hearings before the Ways and Means Committee. The hearings on this subject will be found in *"Revenue Revision, 1934, Hearings before the Committee on Ways and Means, House of Representatives, 73 Congress, 2d Session,"* pages 579 to 722, and in *"Revenue Act of 1934—Hearings Before the Committee on Finance, U. S. Senate, 73d Congress, 2d Session on H. R. 7835,"* pages 247-472. The participants consisted both of representatives of the industries which used the imported oils and the representatives of the dairy and allied industries who were promoting the processing tax. The question of United States revenue or the needs of the Treasury was conspicuous by the absence of any mention thereof.

The entire debate in the House was concerned not with revenue but with the benefit which would accrue to the American farm and dairy interests through the higher prices and lessened use of the imported oils. (This discussion may be found in Congressional Record, 73rd Congress, 2d Session, Vol. 78, Part 3, pages 2512 and 2513; 2524; 2528 to 2532; 2535 and 2536; 2599 to 2600; 2611 to 2616; 2642; 2682; 2683; 2692 to 2702; 2770 and 2771; 2783 to 2786; 2790 to 2797; 2800 and 2801; 2804; 2809; 2890 and 2891; 2897; 2899; 2913; 2916; 2927 to 2930; 2933 and 2934; 3006 and 3008.)

As we have seen, the special provisions relating to Philippine oil were first introduced on the floor of the Senate; and, in the Senate debates, attention was called to the danger that the purpose of the bill might be defeated if the Philippine government should use the moneys transmitted to it to subsidize its coconut oil producers; with the result that Senator Norris included in his amendment the provisions concerning a Philippine subsidy. The entire discussion in the Senate is evidence that the congressional intent on the Philippine oil provisions was not to raise revenue but to regulate. (The discussions in the Senate are found on pages 6308 to 6325, and 6380 to 6389 of the Congressional Record, 73rd Congress, 2d Session, Vol. 78, Part 6, and a portion thereof is in the Appendix, infra. pp. 43-50.)

The decision of and the principles enunciated in the *Child Labor Tax Case* (*Bailey* v. *Drexel Furniture Co.*), 259 U. S. 20, furnish ample basis for the invalidation of the Philippine coconut oil processing tax provisions of the Revenue Act of 1934. In that case the statute simply levied a tax and contained no regulatory provisions whatever. Indeed, the taxes collected would go into the United States Treasury for regular governmental purposes; so there was not, as there is in the case at bar, express provisions excluding the collection of the tax as revenue for the United States Government. Both in that case and in the instant case the tax was upon a part or feature of the process of manufacture; there upon the use of labor of a certain kind, here upon the use of material of a certain kind. This Court refused to accept the congressional designation of the measure as a taxation measure or a revenue measure, but proceeded to analyze the nature of the objective and came to the conclusion that, despite the congressional phraseology, the measure was not a taxation or revenue measure but a measure in a field outside of the federal province.

The attorneys for the Government cite the *Child Labor* and other cases, particularly *Magnano Co.* v. *Hamilton*, 292 U. S. 40, for the proposition that an incidental regulatory motivation will not invalidate a measure whose primary motivation is revenue—a proposition which there is no need here to dispute. It is absurd to call the raising of revenue for the United States the primary motive of statutory provisions which exclude the United States from the receipt or use or control of whatever moneys may be raised under those provisions. In the provisions involved in this case, revenue is not even an incidental purpose; it does not exist at all.

In the *Child Labor* tax case this Court discussed the state bank note case, *Veazie Bank* v. *Fenno*, 8 Wall. 533, and distinguished it by the fact that the statute levying the destructive tax on state bank notes did not show on its face any motive or purpose other than revenue. That argument is not available to the Government in the case at bar, because here the statutory provisions disclose on their face that they are not for revenue.

In the *Child Labor* tax case, this Court also discussed *McCray* v. *United States*, 195 U. S. 27, the oleomargarine statute case. In that statute there were variations in the rate of tax according to the color of the oleomargarine, lending support to the contention that the law was intended to destroy the market of yellow oleomargarine. This Court held that this purpose was not readable from the face of the act and that there was nothing on the face of the act to indicate a purpose other than revenue. In the statutory provisions before us here, the face of the statute excludes the revenue purpose and discloses the regulatory purpose.

In *United States* v. *Doremus*, 249 U. S. 86, dealing with the anti-narcotic statute, the statute was on its face a revenue act and nothing but a revenue act, together with certain provisions which this Court held to be administrative

provisions for the collection of the tax. The statute, as thus interpreted, was simply a levy of taxes on the manufacture and sale of drugs; the proceeds, like other internal revenue, to go into the Treasury for the support of the United States Government. The Philippine coconut oil provisions of the 1934 Act cannot possibly be so interpreted.

Hill v. *Wallace*, 259 U. S. 44, was decided at about the same time as the Child Labor Case and dealt with a statute taxing contracts for future delivery of grain, and this was held unconstitutional because of the elaborate provisions in the act whereby the tax was lifted if certain conditions were filled, and these were held by this Court to be proof that the statute was not for revenue. The decision is authority for the unconstitutionality of the Philippine coconut oil provisions in the Act of 1934; for those provisions contain stronger proof that the tax is not for revenue than did the grain-futures statute.

The logic of the principles set forth by this Court in *United States* v. *Butler*, 297 U. S. 1, requires the invalidation of the processing tax on Philippine coconut oil in the Revenue Act of 1934. The opinion states (p. 61):

> "It is inaccurate and misleading to speak of the exaction from processors prescribed by the challenged act as a tax, or to say that as a tax it is subject to no infirmity. A tax, in the general understanding of the term, and as used in the Constitution, signifies an *exaction for the support of the Government.* The word has never been thought to connote the expropriation of money from one group for the benefit of another. We may concede that the latter sort of imposition is constitutional when imposed to effectuate regulation of a matter *in which both groups are interested and in respect of which there is a power of legislative regulation.* But manifestly no justification for it can be found unless as an integral part of such regulation. The exaction cannot be wrested out of its setting, denominated an excise for raising revenue and legalized

> by ignoring its purpose as a mere instrumentality for bringing about a desired end." (Italics ours.)

And, referring specifically to the Agricultural Adjustment Act levy:

> ". . . The whole revenue from the levy is appropriated in aid of crop control; none of it made available for general governmental use."

It is equally true that none of the collections from the tax on Philippine coconut oil under Section 602½ of the 1934 Act, is made available for general governmental use. No official or department of the United States government is permitted to touch or use a penny of it. The exaction made from the processors of this oil is not for the support of the government. The Philippine coconut oil provisions of the 1934 Act show on their face that revenue for the United States government was not the purpose or any part of the purpose of Congress. The face of the provisions show more than that; for the clause about a Philippine subsidy indicates plainly that the congressional objective was to affect the use of Philippine coconut oil by American soap, oleomargarine, and other manufacturers and thereby to affect the volume or prices or both of domestic oils which compete or can be made to compete with coconut oil—subjects falling within the constitutional domain of State and not national regulatory power.

The arguments advanced in the dissenting opinion in the *Butler* case do not conflict with the foregoing contentions concerning the effect of the *Butler* case upon the Philippine coconut oil provisions of the Revenue Act of 1934, for, in reconciling the position taken in that dissenting opinion with the previous decisions of this Court in the *Child Labor Tax Case* and other cases in which this Court had invalidated taxation statutes, those earlier cases were stated to be concerned with statutes in which the taxes "were them-

selves the instruments of regulation by virtue of their coercive effect on matters left to the control of the states, whereas, in the Agricultural Adjustment Act, the regulation, if any there be, is accomplished not by the tax but by the methods by which the proceeds are expended." In the Philippine coconut oil provisions of the Revenue Act of 1934, however, the intended regulatory effect is to be accomplished by the tax itself.

Under the *Child Labor* and *Hill* v. *Wallace* (supra) decisions, the Philippine coconut oil provisions of Section 602½ of the Act of 1934 are clearly unconstitutional, and, we submit, they cannot be upheld consistently with *United States* v. *Butler* (supra).

VII.

Philippine coconut oil provisions of Section 602½ of the Revenue Act of 1934, if treated as containing an appropriation, would also violate Clause 7 of Section 9 of Article I of the Constitution, taken in connection with Clause 1 of Section 8 of Article I of the Constitution and with the Fifth Amendment.

Clause 7 of Section 9 of Article I of the Constitution provides that "no money shall be drawn from the treasury but in consequence of appropriations made by law." While expressed negatively in terms of a prohibition upon those who wish to draw from the treasury, it surely includes or produces the positive duty of Congress to determine, by means of "appropriations made by law," the purposes for which the moneys in the treasury shall be expended and the amounts to be expended respectively for those purposes. This power of appropriation is a legislative power, indeed one of the most important of legislative powers, and has a most decisive influence upon the cost of government and the tax burden on those chosen to pay that cost, and surely some modicum of exercise of legislative thought or discretion is a requisite for valid action.

As we have seen, the Philippine coconut oil provisions of Section 602½ do not provide for the collection and expenditure of United States revenues, but for collection for the Philippine treasury. We do not have here an "appropriation" in the true sense of that word. Presumably all revenues collected for the support of the Government of the United States and available for appropriation do go into the United States Treasury as the United States Treasury and not merely as a conduit to somebody else.

Clause 7 of Section 9 of Article I seems to have occasioned few court decisions, and the contention made in this part of this brief may have some novelty. This novelty, however, may be the novelty of the statutory provisions which we are considering; for we believe that no precedent will be found in the whole legislative history of the United States for a measure which imposes a heavy, and in some cases, ruinous tax, producing around seventeen million dollars a year or more, upon one group of the American population, numerically a small proportion of that population, and does nothing with or about those onerous millions except to conduct them bodily into the treasury of another government.

There was of course not the slightest investigation into the relationship between the amount of the tax and the needs of the Philippine Commonwealth. Before the Committees which considered and prepared the measure or in the debates thereon, not a word was said nor an iota of evidence produced concerning the needs of the Philippine government. Not the slightest itemizing of the uses of the money was made or thought about. No control is reserved over the uses of the money. The amount bears not the slightest relationship to the needs, if any, for which it was raised or transmitted, nor was there the slightest thought given to any such relationship.

Actually there was no need. In connection with the inauguration of the Philippine Commonwealth, at the last session of the Philippine legislature under the Jones Act regime, the retiring Governor General Murphy sent a message reporting on the remarkable progress of the Philippine Islands, including the financial condition of its government, showing a surplus in the treasury of that government on December 31, 1934, of 75,179,189.42 pesos (over $37,000,000.00) and in the general fund alone a current surplus of approximately 37,000,000 pesos, of which a substantial portion was cash in the governmental depositories, and stating "in the central government for the past 2¾ years expenditures from all funds have been considerably less than the current revenues accruing to those funds." (House Document No. 400, 74th Congress, 2d Session, p. 61.)

As we have pointed out, the 1934 Revenue Bill as prepared by the Secretary of the Treasury and those who worked on it did not contain any section taxing the processing of oils. In the hearings on the bill, the representatives of the Treasury Department explained the needs of the United States Government and the reasons for the various provisions in the bill, but of course had no occasion to mention the oil processing taxes since they were not then in the bill. At no time in the hearings was there a word on any relationship between those processing taxes and the needs of either the United States Government or the Philippine government.

If we could assume, for purposes of argument, that the provisions of Section 602½ with which we are concerned in this case could be treated as a revenue and appropriation measure, they would represent an arbitrary action of Congress and one lacking in the slightest exercise of that minimum of thought and discretion which the Constitution requires of Congress as an appropriating body or as a taxing and appropriating body. Surely some calculation

of relationship between need and expenditure is fundamental to the validity of taxation and appropriation.

If the constitutional requirement of an appropriation could be satisfied by simply stating that all of the proceeds of a particular tax, no matter what the amount, shall be paid over to the Philippine treasury, then the same method could be applied to any and every other tax; that is, select a group which is to pay a specified type of tax, fix the amount without relationship to the needs for which the proceeds are to be applied and then send all the proceeds, whatever the amount may turn out to be, to a specified official, bureau, department or other recipient. No details of appropriation would be required, no study whatever given to the needs of the particular recipient or purpose, but simply the farming out of the yield of each tax to a single designated recipient, each selected group of the population to be burdened with a specific tax without any reasonable calculation of the relationship between the amount levied and the amount needed by the recipient. This would fail to measure up to the minimum requirements of a fiscal system. Clause 7 of Section 9 of Article I surely does not authorize such a procedure. That clause and Clause 1 of Section 8 of Article I of the Constitution surely have more significance than that, especially when taken in connection with the Fifth Amendment. Some exercise of legislative discretion as to the amount needed for the particular purpose is surely requisite.

There are instances, such as drainage districts, in which the entire cost is collected from the owners of the property in the district in accordance with benefits received and put into a special fund to pay that cost. The power of general taxation is not involved in that type of legislation. Then there is the class of measures which provide for pension, compensation or insurance funds where the contributions into the fund are to be made by those who are the bene-

ficiaries of the fund or of the pension, compensation or insurance system, and the amounts of the contributions are arrived at by a rational process of actuarial or similar calculations. There may be instances, such as gasoline taxes placed in the road maintenance fund, in which those who pay are so clearly the direct beneficiaries and in the proportion of payment, that the assessment and special fund method has some moral and rational and therefore constitutional basis. But there can be no sound moral or rational basis in a levy of taxes for a special-purpose fund when the taxpayer is not the direct beneficiary and the amount of the imposition has no relationship or calculable relationship to the amount of the benefit; and we submit that the United States Constitution does not intend that any such method be within the taxing powers of the national legislature. Any system of levies for special-purpose funds, as distinguished from levies for the national treasury from which Congress, by expenditure or appropriation acts, determines and authorizes expenditures for the various classes of governmental needs, is the worst possible system of public finance, one which not only produces endless confusions but in which there lurks the dangers of wastes and corruptions. We believe that such a system is not authorized by the Constitution of the United States and will briefly state some of the reasons, in the history of the Constitution and in decisions by this Court, which support that belief.

This Court has said in *Knowlton* v. *Moore*, 178 U. S. 41 (p. 95):

> "The necessities which gave birth to the Constitution, the controversies which preceded its formation, and the conflicts of opinion which were settled by its adoption, may properly be taken into view for the purpose of tracing to its source any particular provision of the Constitution in order thereby to be enabled to correctly interpret its meaning. *Pollock* v. *Farmers' Loan & Trust Company*, 157 U. S. 558 . . . "

Applying this canon of interpretation, we may inquire into the meaning of the congressional power "to lay and collect taxes, . . . to pay the debts and provide for the common defense and general welfare of the United States," and investigate the light thrown on a proper interpretation of such language by Clause 7 of Section 9 of Article I, providing: "No money shall be drawn from the treasury, but in consequence of appropriations made by law . . ."

This Court has said in *U. S.* v. *Norton*, 91 U. S. 566:

> "The lexical definition of the term 'revenue' is very comprehensive. It is thus given by Webster: 'the income of a nation, derived from its taxes, duties or other sources, for the payment of the national expenses.'"

The last quoted clause of the Constitution may then, well be paraphrased as "none of the income of the nation, derived from its taxes, duties or other sources for the payment of the national expenses, shall be drawn from the treasury, but in consequence of appropriations made by law."

Thus there is implicit in the taxing and appropriating clauses of the Constitution the requirement that taxes be levied for the national expenses, to be paid from the national treasury in consequence of appropriations made by law.

A reference to the early history of the Constitution shows the great importance which was attached to the procuring of a *national* revenue. It will be recalled that debate waxed warm on the question of whether the national government should be given the independent power of taxation, or whether the system in vogue under the Articles of Confederation, under which requisitions were made by the central government on the individual states, should be continued. In many of the Federalist papers we find repeated references to the importance of the power of taxation in the national government, and in these references we find

the importance of a national treasury stressed. In No. 30 of the Federalist, attributed to Alexander Hamilton, there is a discussion of the objects of the federal revenue, and after referring to the power of providing for the support of the national forces, of building and equipping fleets, etc., the Federalist continues:

> "But these are not the only objects to which the jurisdiction of the Union, in respect to revenue, must necessarily be empowered to extend. It must embrace a provision for the support of the national civil list; for the payment of the national debts contracted, or that may be contracted; and, in general, *for all those matters which will call for disbursement out of the national treasury.* The conclusion is, that there must be interwoven in the frame of the government, a general power of taxation, in one shape or another." (Italics ours.)

The constitutional debates, the Federalist papers, and other contemporary documents show the great importance which was attached to the general power of taxation in the federal government to provide for a public treasury to meet the exigencies of the government which then were known or which might be contemplated. The need of a federal treasury was the outstanding reason advanced for the taxation powers of the federal government.

It is thus historically the fact that the concept of a national treasury brought into being the power of national taxation vested in the Congress and it is the concept of a national treasury which illuminates and defines the meaning of the taxing power.

In *"The Foundations of the Constitution,"* by David Hutchinson, referring to the history of the taxation clause of the Constitution (Clause 1, Section 8, Article I), the author states:

> "This clause was suggested by Sherman in convention 'for the object of the old debt.' The convention

disagreed to it, but the Committee of Eleven recommended the same thing in their report of September 4th, which was agreed to nem. con. The clause was suggested to Sherman and the Committee by Article VIII of the Articles of Confederation. Sherman and Ellsworth in a letter to Governor Huntington, September 26, 1787, say:

'The objects for which Congress may apply moneys are the same mentioned in the Eighth Article of the Confederation, viz:, for the common defense and general welfare, and for the payment of debts incurred for those purposes.'

"Madison, in a letter to Andrew Stevenson, November 17, 1830, says the phraseology was copied or borrowed from the Eighth Article of the Articles of Confederation and is 'used in one instrument as in the other.'"

Article VIII of the Articles of Confederation, provided in part as follows:

"All charges of war and all other expenses that shall be incurred for the common defense or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a *common treasury* . . ." (Italics ours.)

The retention in the Constitution of the United States of the language "for the common defense and general welfare" and the reference in Clause 7 of Section 9 of Article I to the treasury cannot be deemed accidental. The exaction of moneys for the purpose of the national treasury is the element which raises such exaction to the dignity of federal taxes.

In *Massachusetts* v. *Mellon*, 262 U. S. 447, this Court held that it would not entertain actions attacking the constitutional validity of an expenditure at the instance of one who paid taxes under general taxation statutes, for the reason that no taxpayer in particular could possibly

be identified as the one whose payments had been used for the expenditure, and that his enforced contribution to the whole mass of collections from general taxes is too small and indefinite to justify judicial interference. In the case of the special-purpose fund tax statute, however, the identification of who is to pay the tax and the amount of his enforced contribution is specified in the statute itself, and there is no uncertainty and, consequently, the question of the validity of the purpose must be open and contestable. Thus, in the case of special-purpose fund tax statutes, there is produced all of the demoralizations in the conduct of government affairs and in the conduct of business affairs, as well as the increase of constitutional law cases in the courts, which is involved in the uncertainties and necessities for decisions concerning the validity of the special purposes for which the tax is imposed and the special fund is created.

It is significant that in an early case, *Smith* v. *Turner*, 7 Howard 283, this Court employed the sentence (p. 446):

> "Congress may tax for the treasury of the Union, and here its power ends."

It is of significance that in every case in which this Court has sanctioned a federal statute which imposes an exaction for a fund other than the general treasury, this Court based its sanction or upholding of the statute on the ground that the exactions were not taxes, and found their justification in powers of Congress other than the taxing power.

An illustration is the case of *Edye* v. *Robertson*, 112 U. S. 580 (the Head-Money Case) involving a statute which levied upon steamship companies fifty-cents for each passenger brought to any port within the United States; the same to be paid to the Collector of Customs of the port and by him into the United States treasury, to constitute a fund to be called the "Immigrants Fund," which fund

was to be used under the direction of the Secretary of the Treasury to defray the expenses of regulating immigration under the statute and for the care of immigrants arriving in the United States and for the relief of such as are in distress and the like. The attack on this statute included the contention that it could be sustained under the taxation power; on which contention this Court stated:

> "But the true answer to all these objections is, that the power exercised in this instance is not the taxing power. The burden imposed on the ship owner by this statute is the mere incident of the regulation of commerce, of that branch of foreign commerce which is involved in immigration. The title of the Act 'an act to regulate immigration' is well chosen. It describes, as well as any short sentence can describe it, the real purpose and effect of the statute. Its provisions, from the beginning to the end, relate to the subject of immigration, and they are aptly designed to mitigate the evils, inherent in the business of bringing foreigners to this country, as those evils affect both the immigrant and the people among whom he is suddenly brought and left to his own resources.
>
> "It is true not much is said about protecting the ship owner, but he is the man who reaps the profits of the transaction, who has the means to protect himself and knows well how to do it, and whose obligations in the premises need the aid of the statutes for their enforcement. The sum demanded of him is not a tax within the meaning of the constitution. The money thus raised, though paid into the treasury, is appropriated in advance to the uses of the statute and does not go to the general support of the government. It constitutes a fund raised from those who are engaged in the transportation of the passengers, and who make profit out of it, for the temporary care of the passengers whom they bring among us and for the protection of the citizens among whom they are landed."

In *Twin City National Bank* v. *Nebeker*, 167 U. S. 196, this Court passed on an Act of Congress providing a na-

tional currency, secured by a pledge of bonds of the United States and which, in the furtherance of that object, and also to meet the expenses attending the execution of the Act, imposed a tax on the notes in circulation of the banking associations organized under the statute. The act did not originate in the House of Representatives, and this fact was alleged as a ground of unconstitutionality.

The Court said (p. 202):

> "The contention in this case is that the Section of the Act of June 3, 1864, providing a national currency secured by a pledge of United States bonds and for the circulation and redemption thereof, so far as it imposed a tax upon the average amount of the notes of a national banking association in circulation, was a revenue bill within the clause of the Constitution declaring that 'all bills for raising revenue shall originate in the House of Representatives.'
>
> . . . . . .
>
> "It is sufficient in the present case to say that an Act of Congress providing a national currency secured by a pledge of bonds of the United States, and which, in the furtherance of that object, and also to meet the expenses attending the execution of the Act, imposed a tax on the notes in circulation of the banking associations organized under the statute, is clearly not a revenue bill which the Constitution declares must originate in the House of Representatives. . . . The main purpose that Congress had in view was to provide a national currency based upon United States bonds and to that end it was deemed wise to impose the tax in question. The tax was a means of effectually accomplishing the great object of giving to the people a currency that would rest, primarily upon the honor of the United States, and be available in every part of the country. There was no purpose by the Act or by any of its provisions to raise revenue to be applied to meeting the expenses or obligations of the government."

In *United States* v. *Norton*, 91 U. S. 566, this Court held that a measure which fixed the fees to be paid for money orders and provided that the fees, without payment thereof into the Treasury, may be used at the post-offices to pay the compensations and expenses of the money-order clerks, was not a revenue measure, saying:

> "In no just view, we think, can the statute in question be deemed a revenue law.
>
> "The lexical definition of the term 'revenue' is very comprehensive. It is thus given by Webster: 'the income of a nation, derived from its taxes, duties or other sources, for the payment of the national expenses.
>
> "It is a matter of common knowledge, that the appellative 'revenue laws' is never applied to the statutes involved in these classes of cases.
>
> "The Constitution of the United States, Article I, Section 7, provided that 'All bills for raising revenue shall originate in the House of Representatives.'
>
> "The precise question before us came under consideration of Mr. Justice Story in U. S. v. Mayo, 1 Gall, 397. He held that the phrase 'revenue laws' as used in the Act of 1804, meant such laws 'as are made for the direct and avowed purpose of creating revenue or public funds for the service of the government. The same doctrine was reaffirmed by that eminent judge, in the U. S. v. Cushman, 2 Sumn. 426.
>
> "These views commend themselves to the approbation of our judgment."

See also *Millard* v. *Roberts*, 202 U. S. 429, 50 Law Ed. 1090, in which this Court held that an act imposing a tax for a fund for the elimination of grade crossings in the District of Columbia was not a revenue measure, this decision being based upon the holding in *Twin City National Bank* v. *Nebeker* (supra), that there was no purpose in the

act to raise revenue to be applied in meeting the expenses or obligations of the government.

If it be valid to levy a tax on one selected group, such as the processors of Philippine coconut oil, for payment not into the general treasury but into a special-purpose fund where the group has no direct interest in the special purpose and is not the beneficiary of the fund, if that be valid, then the same method could be used on any other group for any purpose no matter how unrelated the purpose and the group may be. Under such a scheme, the concept of a national treasury would tend to disappear or be very seriously impaired. We submit that such a statute would violate the Fifth Amendment, in that each selection of the group to bear the tax would be arbitrary; that each statute would either evade Clause 7 of Section of Article I of the Constitution by placing the proceeds of taxes out of the reach of appropriation acts, or, if the designation of the special-purpose fund could be treated as an appropriation, there would be failure to comply with the requirements of Clause 7 of Section 9 of Article I, taken in connection with the Fifth Amendment, that some degree of exercise of thought or discretion go into the determination of the amounts appropriated and the relationship of the amounts to the needs or purposes for which appropriated; and that each such statute would not be a valid exercise of the federal taxing power granted in the Constitution, since that taxing power was intended to provide for a common or national treasury from which, by means of the type of acts known as appropriations, moneys could be drawn for the support of the national government and for the financing of the activities of the national government.

VIII.

Conclusion.

As the federal government is a government of limited powers, it has no non-granted power of taxation or any other non-granted power. If, therefore, the Philippine coconut oil processing tax provisions of the Revenue Act of 1934 do not fall within the scope of the granted taxing or other powers, they are, for that reason, invalid.

We have shown, we submit, that the said provisions of the Revenue Act of 1934:

(a) Do not fall within the powers granted by Clause 1, of Section 8 of Article I of the Constitution, for the tax is not levied for the support of the Government of the United States or the financing of any activities of the Government of the United States, every penny from it being placed in the treasury of another government whose expenditure thereof is not controlled by the United States.

(b) Do not fall within said Clause 1, Section 8, Article I of the Constitution, for the tax is not imposed for the general welfare, being a collection from a designated group of American manufacturers exclusively for the treasury of a single locality.

(c) Do not fall within said Clause 1 of Section 8 of Article I of the Constitution, in that the tax is not imposed for the general welfare of the "United States," for the tax is imposed exclusively for the treasury of the Philippine Islands, which are not a part of the "United States" within the meaning of said clause of the Constitution.

(d) That the tax is not an import tax either under Clause 1 of Section 8 of Article I of the Constitution or under the general power of the United States relating to revenues to or for the Philippine Islands, for it is not levied upon nor is it intended to be levied upon imports; and for the further reason that it is not levied upon all imported Philippine coconut oil, and for the further reason that it is levied upon a purely domestic intra-United States, indeed intra-

state, transaction, which subject-matter of the tax does not and cannot come into being until after all importation has ceased.

(e) The said Philippine coconut oil provisions of the Act of 1934 are not an exercise of the power to regulate or control foreign or Philippine-United States commerce, firstly, because they are not intended to nor do they seek to nor do they regulate commerce between the Philippine Islands and points in the United States; secondly, because all commerce in the oil terminates before the beginning of the processing on which the tax is imposed; and thirdly, because, in so far as the provisions are regulatory, the subject-matter of their regulation is purely intrastate manufacture and intrastate agriculture.

(f) The said provisions are not an exercise of the power to finance the exercise by the United States of any of the responsibilities, duties, functions or activities of the United States in or relating to the Philippine Islands or the affairs of the Philippine Islands, for not one penny from the tax is authorized, directed, required or permitted to be used for any such purpose and the expenditure of the proceeds of the tax is left to the uncontrolled action of the Philippine legislature.

(g) The said provisions are not an exercise of any power which the United States may still possess to regulate the Philippine Islands, for the tax is imposed exclusively on purely domestic processing within and domestic processors within the United States.

In short, the provisions in question are not an exercise of any power possessed by Congress.

Respectfully submitted,

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APPENDIX 1

Section 602½ of Revenue Act of 1934
(c. 277, 48 Stat. 680, 763—U. S. C., Title 26, Sec. 999)

SEC. 602½. PROCESSING TAX ON CERTAIN OILS.

(a) There is hereby imposed upon the first domestic processing of coconut oil, sesame oil, palm oil, palm kernal [1] oil, or sunflower oil, or of any combination or mixture containing a substantial quantity of any one or more of such oils with respect to any of which oils there has been no previous first domestic processing, a tax of 3 cents per pound, to be paid by the processor. There is hereby imposed (in addition to the tax imposed by the preceding sentence) a tax of 2 cents per pound, to be paid by the processor, upon the first domestic processing of coconut oil or of any combination or mixture containing a substantial quantity of coconut oil with respect to which oil there has been no previous first domestic processing, except that the tax imposed by this sentence shall not apply when it is established, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, that such coconut oil (whether or not contained in such a combination or mixture), (A) is wholly the production of the Philippine Islands, or any other possession of the United States, or (B) was produced wholly from materials the growth or production of the Philippine Islands or any other possession of the United States, or (C) was brought into the United States on or before the 30th day after the date of the enactment of this Act or produced from materials brought into the United States on or before the 30th day after date of enactment of this Act, or (D) was purchased under a bona fide contract entered into prior to April 26, 1934, or produced from materials purchased under a bona fide contract entered into prior to April 26, 1934. All taxes collected under this section with respect to coconut oil wholly of Philippine

[1] So in original.

production or produced from materials wholly of Philippine growth or production, shall be held as a separate fund and paid to the Treasury of the Philippine Islands, but if at any time the Philippine Government provides by any law for any subsidy to be paid to the producers of copra, coconut oil, or allied products, no further payments to the Philippine Treasury shall be made under this subsection. For the purposes of this section the term "first domestic processing" means the first use in the United States, in the manufacture or production of an article intended for sale, of the article with respect to which the tax is imposed, but does not include the use of palm oil in the manufacture of tin plate.

(b) Each processor required to pay the tax imposed by this section shall make monthly returns under oath in duplicate and pay the tax to the collector of internal revenue for the district in which is located his principal place of business, or if he has no principal place of business in the United States, then to the collector of internal revenue at Baltimore, Maryland. Such returns shall contain such information and be made at such times and in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulations prescribe. The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 1 per centum per month from the time the tax became due until paid.

(c) Subject to such rules and regulations as the Commissioner, with the approval of the Secretary, may prescribe, any person who has sold to a State, or a political subdivision thereof, for use in the exercise of an essential governmental function any article containing any such oil, combination, or mixture, upon the processing of which a tax has been paid under this section shall be entitled to a credit or refund of the tax paid with respect to the quantity of such oil, combination, or mixture contained in such article.

(d) Upon the exportation to any foreign country or to a possession of the United States of any article wholly or in chief value of an article with respect to the processing of which a tax has been paid under this section, the exporter thereof shall be entitled to a refund of the amount of such tax. Upon the giving of bond satisfactory to the Secretary for faithful observance of the provisions of this section requiring the payment of taxes, any person shall be entitled, without payment of the tax, to process for such exportation any article with respect to which a tax is imposed by this section.

(e) If (1) any person has, prior to January 26, 1934, made a bona fide contract for the sale on or after the effective date of this section of any article wholly or in chief value of an article with respect to which a tax is imposed by this section or of any article with respect to which a tax is imposed by this subsection, and if (2) such contract does not permit the addition to the amount to be paid thereunder of the whole of such tax, then (unless the contract expressly prohibits such addition) the vendee shall pay so much of the tax as is not permitted to be added to the contract price. Taxes payable by the vendee shall be paid to the vendor at the time the sale is consummated and shall be returned and paid to the United States by the vendor in the same manner as other taxes under this section. In case of failure or refusal by the vendee to pay such taxes to the vendor, the vendor shall report the facts to the Commissioner, who shall cause collection of such taxes to be made from the vendee.

(f) All provisions of law (including penalties) applicable in respect of taxes imposed by Section 600 of the Revenue Act of 1926, shall, insofar as applicable and not inconsistent with this section, be applicable in respect of the taxes imposed by this section.

(g) All collections except as provided in sub-section (a) under this section shall, notwithstanding any other provisions of law, be covered into the general fund of the Treasury of the United States.

APPENDIX 2

Sections of the Act of Congress of August 29, 1916, Chap. 416, 39 Stat. at L. 545

(Philippine Autonomy Act—"Jones Act")

. . . . . .

SEC. 3. That no law shall be enacted in said islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws. Private property shall not be taken for public use without just compensation.

That in all criminal prosecutions the accused shall enjoy the right to be heard by himself and counsel, to demand the nature and cause of the accusations against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to compel the attendance of witnesses in his behalf.

That no person shall be held to answer for a criminal offense without due process of law; and no person for the same offense shall be twice put in jeopardy of punishment, nor shall be compelled in any criminal case to be a witness against himself.

That all persons shall before conviction be bailable by sufficient sureties, except for capital offenses.

That no law impairing the obligation of contracts shall be enacted.

That no person shall be imprisoned for debt.

That the privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion, insurrection, or invasion the public safety may require it, in either of which events the same may be suspended by the President, or by the Governor General, wherever during such period the necessity for such suspension shall exist.

That no *ex post facto* law or bill of attainder shall be enacted nor shall the law of primogeniture ever be in force in the Philippines.

That no law granting a title of nobility shall be enacted, and no person holding any office of profit or trust in said Islands shall, without the consent of the Congress of the United States, accept any present, emolument, office, or title of any kind whatever from any king, queen, prince, or foreign state.

That excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

That the right to be secured against unreasonable searches and seizures shall not be violated.

That slavery shall not exist in said Islands; nor shall involuntary servitude exist therein except as a punishment for crime whereof the party shall have been duly convicted.

That no law shall be passed abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

That no law shall be made respecting an establishment of religion or prohibiting the free exercise thereof, and that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed; and no religious test shall be required for the exercise of civil or political rights. No public money or property shall ever be appropriated, applied, donated, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary as such. Contracting of polygamous or plural marriages hereafter is prohibited. That no law shall be construed to permit polygamous or plural marriages.

That no person shall be paid out of the treasury except in pursuance of an appropriation by law.

That the rule of taxation in said Islands shall be uniform.

That no bill which may be enacted into law shall embrace more than one subject, and that subject shall be expressed in the title of the bill.

That no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized.

That all money collected on any tax levied or assessed for a special purpose shall be treated as a special fund in the treasury and paid out for such purpose only.

SEC. 4. That all expenses that may be incurred on account of the government of the Philippines for salaries of officials and the conduct of their offices and departments,

and all expenses and obligations contracted for the internal improvement or development of the Islands, not, however, including defenses, barracks, and other works undertaken by the United States, shall, except as otherwise specifically provided by the Congress, be paid by the government of the Philippines.

SEC. 5. That the statutory laws of the United States hereafter enacted shall not apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this act.

SEC. 6. That the laws now in force in the Philippines shall continue in force and effect, except as altered, amended, or modified herein, until altered, amended, or repealed by the legislative authority herein provided or by act of Congress of the United States.

SEC. 7. That the legislative authority herein provided shall have power, when not inconsistent with this act, by due enactment to amend, alter, modify, or repeal any law, civil or criminal, continued in force by this act as it may from time to time see fit.

This power shall specifically extend with the limitation herein provided as to the tariff to all laws relating to revenue and taxation in effect in the Philippines.

SEC. 8. That general legislative power, except as otherwise herein provided, is hereby granted to the Philippine legislature, authorized by this act.

SEC. 9. That all the property and rights which may have been acquired in the Philippine Islands by the United States under the treaty of peace with Spain, signed December tenth, eighteen hundred and ninety-eight, except such land or other property as has been or shall be designated by the President of the United States for military and other reservations of the government of the United States, and all lands which may have been subsequently acquired by the government of the Philippine Islands by purchase under the provisions of sections sixty-three and sixty-four of the act of Congress approved July first, nineteen hundred and two, except such as may have heretofore been sold and disposed of in accordance with the provisions of said Act of Congress, are hereby placed under the control of the government of said Islands to be administered or

disposed of for the benefit of the inhabitants thereof, and the Philippine legislature shall have power to legislate with respect to all such matters as it may deem advisable; but acts of the Philippine legislature with reference to land of the public domain, timber, and mining, hereafter enacted, shall not have the force of law until approved by the President of the United States: Provided, That upon the approval of such an act by the Governor General, it shall be by him forthwith transmitted to the President of the United States, and he shall approve or disapprove the same within six months from and after its enactment and submission for his approval, and if not disapproved within such time it shall become a law the same as if it had been specifically approved: Provided further, That where lands in the Philippine Islands have been or may be reserved for any public purpose of the United States, and, being no longer required for the purpose for which reserved, have been or may be, by order of the President, placed under the control of the government of said Islands to be administered for the benefit of the inhabitants thereof, the order of the President shall be regarded as effectual to give the government of said Islands full control and power to administer and dispose of such lands for the benefit of the inhabitants of said Islands.

SEC. 10. That while this act provides that the Philippine government shall have the authority to enact a tariff law the trade relations between the Islands and the United States shall continue to be governed exclusively by laws of the Congress of the United States: Provided, That tariff acts or acts amendatory to the tariff of the Philippine Islands shall not become law until they shall receive the approval of the President of the United States, nor shall any act of the Philippine legislature affecting immigration or the currency or coinage laws of the Philippines become a law until it has been approved by the President of the United States: Provided further, That the President shall approve or disapprove any act mentioned in the foregoing proviso within six months from and after its enactment and submission for his approval, and if not disapproved within such time it shall become a law the same as if it had been specifically approved.

SEC. 11. That no export duties shall be levied or collected on exports from the Philippine Islands, but taxes and assessments on property, and license fees for franchises and privileges, and internal taxes, direct or indirect, may be imposed for the purposes of the Philippine government and the provincial and municipal governments thereof, respectively, as may be provided and defined by acts of the Philippine legislature, and, where necessary to anticipate taxes and revenues, bonds and other obligations may be issued by the Philippine government or any provincial or municipal government therein, as may be provided by law and to protect the public credit: Provided, however, That the entire indebtedness of the Philippine government created by the authority conferred therein shall not exceed at any one time the sum of $15,000,000 exclusive of those obligations known as friar land bonds, nor that of any province or municipality a sum in excess of seven per centum of the aggregate tax valuation of its property at any one time.

(This Section was amended first by Act of Congress of July 21, 1921, and subsequently by Act of Congress of May 31, 1922, by making the proviso read as follows: "Provided, however, That the entire indebtedness of the Philippine Government created by the authority conferred herein, exclusive of those obligations known as friar land bonds, shall not exceed at any one time 10 per centum of the aggregate tax valuation of its property, nor that of the city of Manila 10 per centum of the aggregate tax valuation of its property, nor that of any Province or municipality a sum in excess of 7 per centum of the aggregate tax valuation of its property at any one time. In computing the indebtedness of the Philippine Government, bonds not to exceed $10,000,000 in amount, issued by that Government, secured by an equivalent amount of bonds issued by the Province or municipalities thereof, shall not be counted.")

SEC. 12. That general legislative powers in the Philippines, except as herein otherwise provided, shall be vested in a legislature which shall consist of two houses, one the senate and the other the house of representatives, and the two houses shall be designated "the Philippine legislature:" Provided, That until the Philippine legislature as

herein provided shall have been organized the existing Philippine legislature shall have all legislative authority herein granted to the government of the Philippine Islands, except such as may now be within the exclusive jurisdiction of the Philippine Commission, which is so continued until the organization of the legislature herein provided for the Philippines. When the Philippine legislature shall have been organized, the exclusive legislative jurisdiction and authority exercised by the Philippine Commission shall thereafter be exercised by the Philippine legislature.

SEC. 13. That the members of the senate of the Philippines, except as herein provided, shall be elected for terms of six and three years, as hereinafter provided, by the qualified electors of the Philippines. Each of the senatorial districts defined as hereinafter provided shall have the right to elect two senators. No person shall be an elective member of the senate of the Philippines who is not a qualified elector and over thirty years of age, and who is not able to read and write either the Spanish or English language, and who has not been a resident of the Philippines for at least two consecutive years and an actual resident of the senatorial district from which chosen for a period of at least one year immediately prior to his election.

SEC. 14. That the members of the house of representatives shall, except as herein provided, be elected triennially by the qualified electors of the Philippines. Each of the representative districts hereinafter provided for shall have the right to elect one representative. No person shall be an elective member of the house of representatives who is not a qualified elector and over twenty-five years of age, and who is not able to read and write either the Spanish or English language, and who has not been an actual resident of the district from which elected for at least one year immediately prior to his election; Provided, That the members of the present assembly elected on the first Tuesday in June, nineteen hundred and sixteen, shall be the members of the house of representatives from their respective districts for the term expiring in nineteen hundred and nineteen.

SEC. 19. That each house of the legislature shall keep a journal of its proceedings, and, from time to time, publish the same; and the yeas and nays of the members of either house, on any question, shall, upon demand of one-fifth of those present, be entered on the journal, and every bill and joint resolution which shall have passed both houses shall, before it becomes a law, be presented to the Governor General. If he approves the same, he shall sign it; but if not, he shall return it with his objections to that house in which it shall have originated, which shall enter the objections at large on its journal and proceed to reconsider it. If, after such reconsideration, two-thirds of the members elected to that house shall agree to pass the same, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of all the members elected to that house it shall be sent to the Governor General, who, in case he shall then not approve, shall transmit the same to the President of the United States. The vote of each house shall be by the yeas and nays, and the names of the members voting for and against shall be entered on the journal. If the President of the United States approve the same, he shall sign it and it shall become a law. If he shall not approve the same, he shall return it to the Governor General, so stating, and it shall not become a law; Provided, That if any bill or joint resolution shall not be returned by the Governor General as herein provided within twenty days (Sundays excepted) after it shall have been presented to him the same shall become a law in like manner as if he had signed it, unless the legislature by adjournment prevent its return, in which case it shall become a law unless vetoed by the Governor General within thirty days after adjournment: Provided further, That the President of the United States shall approve or disapprove an act submitted to him under the provisions of this section within six months from and after its enactment and submission for its approval; and if not approved within such time, it shall become a law the same as if it had been specifically approved. The Governor General shall have the power to veto any particular item or items of an appropriation bill, but the veto shall not affect the item or items to which he does not object. The

item or items objected to shall not take effect except in the manner heretofore provided in this section as to bills and joint resolutions returned to the legislature without his approval.

All laws enacted by the Philippine legislature shall be reported to the Congress of the United States, which hereby reserves the power and authority to annul the same. If at the termination of any fiscal year the appropriations necessary for the support of government for the ensuing fiscal year shall not have been made, the several sums appropriated in the last appropriation bills for the objects and purposes therein specified, so far as the same may be done, shall be deemed to be reappropriated for the several objects and purposes specified in said last appropriation bill; and until the legislature shall act in such behalf the treasurer shall, when so directed by the Governor General, make the payments necessary for the purposes aforesaid.

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SEC. 21. That the supreme executive power shall be vested in an executive officer, whose official title shall be "the Governor General of the Philippine Islands." He shall be appointed by the President, by and with the advice and consent of the Senate of the United States, and hold his office at the pleasure of the President and until his successor is chosen and qualified. The Governor General shall reside in the Philippine Islands during his official incumbency, and maintain his office at the seat of government. He shall, unless otherwise herein provided, appoint, by and with the consent of the Philippine senate, such officers as may now be appointed by the Governor General, or such as he is authorized by this act to appoint, or whom he may hereafter be authorized by law to appoint; but appointments made while the senate is not in session shall be effective either until disapproval or until the next adjournment of the senate. He shall have general supervision and control of all of the departments and bureaus of the government in the Philippine Islands as far as is not inconsistent with the provisions of this act, and shall be commander in chief of all locally created armed forces and Militia. He is hereby vested with the exclusive power

to grant pardons and reprieves and remit fines and forfeitures, and may veto any legislation enacted as herein provided. He shall submit within ten days of the opening of each regular session of the Philippine legislature a budget of receipts and expenditures, which shall be the basis of the annual appropriation bill. He shall commission all officers that he may be authorized to appoint. He shall be responsible for the faithful execution of the laws of the Philippine Islands and of the United States operative within the Philippine Islands, and whenever it becomes necessary he may call upon the commanders of the military and naval forces of the United States in the Islands, or summon the *posse comitatus*, or call out the Militia or other locally created armed forces, to prevent or suppress lawless violence, invasion, insurrection, or rebellion; and he may, in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it, suspend the privileges of the writ of habeas corpus, or place the Islands, or any part thereof, under martial law: Provided, That whenever the Governor General shall exercise this authority, he shall at once notify the President of the United States thereof, together with the attending facts and circumstances, and the President shall have power to modify or vacate the action of the Governor General. He shall annually and at such other times as he may be required, make such official report of the transactions of the government of the Philippine Islands to an executive department of the United States to be designated by the President, and his said annual report shall be transmitted to the Congress of the United States; and he shall perform such additional duties and functions as may in pursuance of law, be delegated or assigned to him by the President.

SEC. 22. That, except as provided otherwise in this act, the executive departments of the Philippine government shall continue as now authorized by law until otherwise provided by the Philippine legislature. When the Philippine legislature herein provided shall convene and organize, the Philippine Commission, as such, shall cease and determine, and the members thereof shall vacate their offices as members of said Commission: Provided, That the heads of executive departments shall continue to exer-

cise their executive functions until the heads of departments provided by the Philippine legislature pursuant to the provisions of this act are appointed and qualified. The Philippine legislature may thereafter by appropriate legislation increase the number or abolish any of the executive departments, or make such changes in the names and duties thereof as it may see fit, and shall provide for the appointment and removal of the heads of the executive departments by the Governor General: Provided, That all executive functions of the government must be directly under the Governor General or within one of the executive departments under the supervision and control of the Governor General. There is hereby established a bureau, to be known as the bureau of non-Christian tribes, which said bureau shall be embraced in one of the executive departments to be designated by the Governor General, and shall have general supervision over the public affairs of the inhabitants of the territory represented in the legislature by appointive senators and representatives.

SEC. 23. That there shall be appointed by the President, by and with the advice and consent of the Senate of the United States, a vice governor of the Philippine Islands, who shall have all the powers of the Governor General in the case of a vacancy or temporary removal, resignation, or disability of the Governor General, or in case of his temporary absence; and the said vice governor shall be the head of the executive department, known as the department of public instruction, which shall include the bureau of education and the bureau of health, and he may be assigned such other executive duties as the Governor General may designate.

Other bureaus now included in the department of public instruction shall, until otherwise provided by the Philippine legislature, be included in the department of the interior.

The President may designate the head of an executive department of the Philippine government to act as Governor General in the case of a vacancy, the temporary removal, resignation, or disability of the Governor General and the vice governor, or their temporary absence, and the head of the department thus designated shall exercise

all the powers and perform all the duties of the Governor General during such vacancy, disability, or absence.

SEC. 24. That there shall be appointed by the President an auditor, who shall examine, audit, and settle all accounts pertaining to the revenues and receipts from whatever source of the Philippine government and of the provincial and municipal governments of the Philippines, including trust funds and funds derived from bond issues; and audit, in accordance with law and administrative regulations, all expenditures of funds or property pertaining to or held in trust by the government of the provinces or municipalities thereof. He shall perform a like duty with respect to all government branches.

(Here follow other provisions regarding the organization of the office of the auditor.)

The office of the auditor shall be under the general supervision of the Governor General and shall consist of the auditor and deputy auditor and such necessary assistants as may be prescribed by law.

SEC. 25. . . .

If the Governor General shall confirm the action of the auditor, he shall so indorse the appeal and transmit it to the auditor, and the action shall thereupon be final and conclusive. Should the Governor General fail to sustain the action of the auditor, he shall forthwith transmit his grounds of disapproval to the Secretary of War, together with the appeal and the papers necessary to a proper understanding of the matter. The decision of the Secretary of War in such case shall be final and conclusive.

SEC. 26. That the supreme court and the courts of first instance of the Philippine Islands shall possess and exercise jurisdiction as heretofore provided and such additional jurisdiction as shall hereafter be prescribed by law. The municipal courts of said Islands shall possess and exercise jurisdiction as now provided by law, subject in all matters to such alteration and amendment as may be hereafter enacted by law; and the chief justice and associate justices of the supreme court shall hereafter be appointed by the President, by and with the advice and consent of the Senate of the United States. The judges of the court of first instance shall be appointed by the Gov-

ernor General, by and with the advice and consent of the Philippine senate: Provided, That the admiralty jurisdiction of the supreme court and courts of first instance shall not be changed except by act of Congress. That in all cases pending under the operation of existing laws, both criminal and civil, the jurisdiction shall continue until final judgment and determination.

(Section 27 contains provisions regarding the jurisdiction of the supreme court of the United States to review judgments of Philippine Courts.)

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SEC. 29. That, except as in this act otherwise provided, the salaries of all the officials of the Philippines not appointed by the President, including deputies, assistants, and other employees, shall be such and be so paid out of the revenues of the Philippines as shall from time to time be determined by the Philippine legislature; and if the legislature shall fail to make an appropriation for such salaries, the salaries so fixed shall be paid without the necessity of further appropriation thereof. The salaries of all officers and all expenses of the offices of the various officials of the Philippines appointed as herein provided by the President shall also be paid out of the revenues of the Philippines. The annual salaries of the following named officials appointed by the President and so to be paid shall be: The Governor General $18,000; in addition thereto he shall be entitled to the occupancy of the buildings heretofore used by the chief executive of the Philippines, with the furniture and effects therein, free of rental; vice governor, $10,000; chief justice of the supreme court, $8,000; associate justices of the supreme court, $7,500 each; auditor, $6,000; deputy auditor, $3,000.

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APPENDIX 3

Philippine Independence Act

Act of March 24, 1934, c. 84, 48 Stat. 456

[Public No. 127, 73d Congress]

[H. R. 8573]

AN ACT

To provide for the complete independence of the Philippine Islands, to provide for the adoption of a constitution and a form of government for the Philippine Islands and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

CONVENTION TO FRAME CONSTITUTION FOR PHILIPPINE ISLANDS.

SECTION 1. The Philippine Legislature is hereby authorized to provide for the election of delegates to a constitutional convention, which shall meet in the hall of the house of representatives in the capital of the Philippine Islands, at such time as the Philippine Legislature may fix, but not later than October 1, 1934, to formulate and draft a constitution for the government of the Commonwealth of the Philippine Islands, subject to the conditions and qualifications prescribed in this Act, which shall exercise jurisdiction over all the territory ceded to the United States by the treaty of peace concluded between the United States and Spain on the 10th day of December 1898, the boundaries of which are set forth in Article III of said treaty, together with those islands embraced in the treaty between Spain and the United States concluded at Washington on the 7th day of November 1900. The Philippine Legislature shall provide for the necessary expenses of such convention.

CHARACTER OF CONSTITUTION—MANDATORY PROVISIONS.

SEC. 2. (a) The constitution formulated and drafted shall be republican in form, shall contain a bill of rights, and

shall, either as a part thereof or in an ordinance appended thereto, contain provisions to the effect that, pending the final and complete withdrawal of the sovereignty of the United States over the Philippine Islands—

(1) All citizens of the Philippine Islands shall owe allegiance to the United States.

(2) Every officer of the government of the Commonwealth of the Philippine Islands shall, before entering upon the discharge of his duties, take and subscribe an oath of office, declaring, among other things, that he recognizes and accepts the supreme authority of and will maintain true faith and allegiance to the United States.

(3) Absolute toleration of religious sentiment shall be secured and no inhabitant or religious organization shall be molested in person or property on account of religious belief or mode of worship.

(4) Property owned by the United States, cemeteries, churches, and parsonages or convents appurtenant thereto, and all lands, buildings, and improvements used exclusively for religious, charitable, or educational purposes shall be exempt from taxation.

(5) Trade relations between the Philippine Islands and the United States shall be upon the basis prescribed in Section 6.

(6) The public debt of the Philippine Islands and its subordinate branches shall not exceed limits now or hereafter fixed by the Congress of the United States; and no loans shall be contracted in foreign countries without the approval of the President of the United States.

(7) The debts, liabilities, and obligations of the present Philippine government, its Provinces, municipalities, and instrumentalities, valid and subsisting at the time of the adoption of the constitution, shall be assumed and paid by the new government.

(8) Provision shall be made for the establishment and maintenance of an adequate system of public schools, primarily conducted in the English language.

(9) Acts affecting currency, coinage, imports, exports, and immigration shall not become law until approved by the President of the United States.

(10) Foreign affairs shall be under the direct supervision and control of the United States.

(11) All acts passed by the Legislature of the Commonwealth of the Philippine Islands shall be reported to the Congress of the United States.

(12) The Philippine Islands recognizes the right of the United States to expropriate property for public uses, to maintain military and other reservations and armed forces in the Philippines, and, upon order of the President, to call into the service of such armed forces all military forces organized by the Philippine government.

(13) The decisions of the courts of the Commonwealth of the Philippine Islands shall be subject to review by the Supreme Court of the United States as provided in paragraph (6) of Section 7.

(14) The United States may, by Presidential proclamation, exercise the right to intervene for the preservation of the government of the Commonwealth of the Philippine Islands and for the maintenance of the government as provided in the constitution thereof, and for the protection of life, property, and individual liberty and for the discharge of government obligations under and in accordance with the provisions of the constitution.

(15) The authority of the United States High Commissioner to the government of the Commonwealth of the Philippine Islands, as provided in this Act, shall be recognized.

(16) Citizens and corporations of the United States shall enjoy in the Commonwealth of the Philippine Islands all the civil rights of the citizens and corporations, respectively, thereof.

(b) The constitution shall also contain the following provisions, effective as of the date of the proclamation of the President recognizing the independence of the Philippine Islands, as hereinafter provided:

(1) That the property rights of the United States and the Philippine Islands shall be promptly adjusted and settled, and that all existing property rights of citizens or corporations of the United States shall be acknowledged,

respected, and safeguarded to the same extent as property rights of citizens of the Philippine Islands.

(2) That the officials elected and serving under the constitution adopted pursuant to the provisions of this Act shall be constitutional officers of the free and independent government of the Philippine Islands and qualified to function in all respects as if elected directly under such government, and shall serve their full terms of office as prescribed in the constitution.

(3) That the debts and liabilities of the Philippine Islands, its Provinces, cities, municipalities, and instrumentalities, which shall be valid and subsisting at the time of the final and complete withdrawal of the sovereignty of the United States, shall be assumed by the free and independent government of the Philippine Islands; and that where bonds have been issued under authority of an Act of Congress of the United States by the Philippine Islands, or any Province, city, or municipality therein, the Philippine government will make adequate provision for the necessary funds for the payment of interest and principal, and such obligations shall be a first lien on the taxes collected in the Philippine Islands.

(4) That the government of the Philippine Islands, on becoming independent of the United States, will assume all continuing obligations assumed by the United States under the treaty of peace with Spain ceding said Philippine Islands to the United States.

(5) That by way of further assurance the government of the Philippine Islands will embody the foregoing provisions (except paragraph (2)) in a treaty with the United States.

SUBMISSION OF CONSTITUTION TO THE PRESIDENT OF THE UNITED STATES.

SEC. 3. Upon the drafting and approval of the constitution by the constitutional convention in the Philippine Islands, the constitution shall be submitted within two years after the enactment of this Act to the President of the United States, who shall determine whether or not it conforms with the provisions of this Act. If the President

finds that the proposed constitution conforms substantially with the provisions of this Act he shall so certify to the Governor General of the Philippine Islands, who shall so advise the constitutional convention. If the President finds that the constitution does not conform with the provisions of this Act he shall so advise the Governor General of the Philippine Islands, stating wherein in his judgment the constitution does not so conform and submitting provisions which will in his judgment make the constitution so conform. The Governor General shall in turn submit such message to the constitutional convention for further action by them pursuant to the same procedure hereinbefore defined, until the President and the constitutional convention are in agreement.

SUBMISSION OF CONSTITUTION TO FILIPINO PEOPLE.

SEC. 4. After the President of the United States has certified that the constitution conforms with the provisions of this Act, it shall be submitted to the people of the Philippine Islands for their ratification or rejection at an election to be held within four months after the date of such certification, on a date to be fixed by the Philippine Legislature, at which election the qualified voters of the Philippine Islands shall have an opportunity to vote directly for or against the proposed constitution and ordinances appended thereto. Such election shall be held in such manner as may be prescribed by the Philippine Legislature, to which the return of the election shall be made. The Philippine Legislature shall by law provide for the canvassing of the return and shall certify the result to the Governor General of the Philippine Islands, together with a statement of the votes cast, and a copy of said constitution and ordinances. If a majority of the votes cast shall be for the constitution, such vote shall be deemed an expression of the will of the people of the Philippine Islands in favor of Philippine Independence, and the Governor General shall, within thirty days after receipt of the certification from the Philippine Legislature, issue a proclamation for the election of officers of the government of the Commonwealth of the Philippine Islands provided for in the constitution.

The election shall take place not earlier than three months nor later than six months after the proclamation by the Governor General ordering such election. When the election of the officers provided for under the constitution has been held and the results determined, the Governor General of the Philippine Islands shall certify the results of the election to the President of the United States, who shall thereupon issue a proclamation announcing the results of the election, and upon the issuance of such proclamation by the President the existing Philippine government shall terminate and the new government shall enter upon its rights, privileges, powers, and duties, as provided under the constitution. The present government of the Philippine Islands shall provide for the orderly transfer of the functions of government.

If a majority of the votes cast are against the constitution, the existing government of the Philippine Islands shall continue without regard to the provisions of this Act.

TRANSFER OF PROPERTY AND RIGHTS TO PHILIPPINE COMMONWEALTH.

SEC. 5. All the property and rights which may have been acquired in the Philippine Islands by the United States under the treaties mentioned in the first section of this Act, except such land or other property as has heretofore been designated by the President of the United States for Military and other reservations of the Government of the United States, and except such land or other property or rights or interests therein as may have been sold or otherwise disposed of in accordance with law, are hereby granted to the government of the Commonwealth of the Philippine Islands when constituted.

RELATIONS WITH THE UNITED STATES PENDING COMPLETE INDEPENDENCE.

SEC. 6. After the date of the inauguration of the government of the Commonwealth of the Philippine Islands trade relations between the United States and the Philippine Islands shall be as now provided by law, subject to the following exceptions:

(a) There shall be levied, collected, and paid on all refined sugars in excess of fifty thousand long tons, and on unrefined sugars in excess of eight hundred thousand long tons, coming into the United States from the Philippine Islands in any calendar year, the same rates of duty which are required by the laws of the United States to be levied, collected, and paid upon like articles imported from foreign countries.

(b) There shall be levied, collected, and paid on all coconut oil coming into the United States from the Philippine Islands in any calendar year in excess of two hundred thousand long tons, the same rates of duty which are required by the laws of the United States to be levied, collected, and paid upon like articles imported from foreign countries.

(c) There shall be levied, collected, and paid on all yarn, twine, cord, cordage, rope and cable, tarred or untarred, wholly or in chief value of manila (abaca) or other hard fibers, coming into the United States from the Philippine Islands in any calendar year in excess of a collective total of three million pounds of all such articles hereinbefore enumerated, the same rates of duty which are required by the laws of the United States to be levied, collected, and paid upon like articles imported from foreign countries.

(d) In the event that in any year the limit in the case of any article which may be exported to the United States free of duty shall be reached by the Philippine Islands, the amount or quantity of such articles produced or manufactured in the Philippine Islands thereafter that may be so exported to the United States free of duty shall be allocated, under export permits issued by the government of the Commonwealth of the Philippine Islands, to the producers or manufacturers of such articles proportionately on the basis of their exportation to the United States in the preceding year; except that in the case of unrefined sugar the amount thereof to be exported annually to the United States free of duty shall be allocated to the sugar-producing mills of the islands proportionately on the basis of their average annual production for the calendar years 1931, 1932, and 1933, and the amount of sugar from each mill which may be so exported shall be allocated in each year between the

mill and the planters on the basis of the proportion of sugar to which the mill and the planters are respectively entitled. The government of the Philippine Islands is authorized to adopt the necessary laws and regulations for putting into effect the allocation hereinbefore provided.

(e) The government of the Commonwealth of the Philippine Islands shall impose and collect an export tax on all articles that may be exported to the United States from the Philippine Islands free of duty under the provisions of existing law as modified by the foregoing provisions of this section, including the articles enumerated in subdivisions (a), (b), and (c), within the limitations therein specified, as follows:

(1) During the sixth year after the inauguration of the new government the export tax shall be 5 per centum of the rates of duty which are required by the laws of the United States to be levied, collected, and paid on like articles imported from foreign countries;

(2) During the seventh year after the inauguration of the new government the export tax shall be 10 per centum of the rates of duty which are required by the laws of the United States to be levied, collected, and paid on like articles imported from foreign countries;

(3) During the eighth year after the inauguration of the new government the export tax shall be 15 per centum of the rates of duty which are required by the laws of the United States to be levied, collected, and paid on like articles imported from foreign countries;

(4) During the ninth year after the inauguration of the new government the export tax shall be 20 per centum of the rates of duty which are required by the laws of the United States to be levied, collected, and paid on like articles imported from foreign countries.

(5) After the expiration of the ninth year after the inauguration of the new government the export tax shall be 25 per centum of the rates of duty which are required by the laws of the United States to be levied, collected and paid on like articles imported from foreign countries;

The government of the Commonwealth of the Philippine Islands shall place all funds received from such export

taxes in a sinking fund, and such funds shall, in addition to other moneys available for that purpose, be applied solely to the payment of the principal and interest on the bonded indebtedness of the Philippine Islands, its Provinces, municipalities, and instrumentalities, until such indebtedness has been fully discharged.

When used in this section in a geographical sense, the term "United States" includes all Territories and possessions of the United States, except the Philippine Islands, the Virgin Islands, American Samoa, and the islands of Guam.

SEC. 7. Until the final and complete withdrawal of American sovereignty over the Philippine Islands—

(1) Every duly adopted amendment to the constitution of the government of the Commonwealth of the Philippine Islands shall be submitted to the President of the United States for approval. If the President approves the amendment or if the President fails to disapprove such amendment within six months from the time of its submission, the amendment shall take effect as a part of such constitution.

(2) The President of the United States shall have authority to suspend the taking effect of or the operation of any law, contract, or executive order of the government of the Commonwealth of the Philippine Islands, which in his judgment will result in a failure of the government of the Commonwealth of the Philippine Islands to fulfill its contracts or to meet its bonded indebtedness and interest thereon or to provide for its sinking funds or which seems likely to impair the reserves for the protection of the currency of the Philippine Islands or which in his judgment will violate international obligations of the United States.

(3) The Chief Executive of the Commonwealth of the Philippine Islands shall make an annual report to the President and Congress of the United States of the proceedings and operations of the government of the Commonwealth of the Philippine Islands and shall make such other reports as the President or Congress may request.

(4) The President shall appoint by and with the advice and consent of the Senate a United States High Commis-

sioner to the government of the Commonwealth of the Philippine Islands who shall hold office at the pleasure of the President and until his successor is appointed and qualified. He shall be known as the United States High Commissioner to the Philippine Islands. He shall be the representative of the President of the United States in the Philippine Islands and shall be recognized as such by the government of the Commonwealth of the Philippine Islands, by the commanding officers of the military forces of the United States, and by all civil officials of the United States in the Philippine Islands. He shall have access to all records of the government or any subdivision thereof, and shall be furnished by the Chief Executive of the Commonwealth of the Philippine Islands with such information as he shall request.

If the government of the Commonwealth of the Philippine Islands fails to pay any of its bonded or other indebtedness or the interest thereon when due or to fulfill any of its contracts, the United States High Commissioner shall immediately report the facts to the President, who may thereupon direct the High Commissioner to take over the customs offices and administration of the same, administer the same, and apply such part of the revenue received therefrom as may be necessary for the payment of such overdue indebtedness or for the fulfillment of such contracts. The United States High Commissioner shall annually, and at such other times as the President may require, render an official report to the President and Congress of the United States. He shall perform such additional duties and functions as may be delegated to him from time to time by the President under the provisions of this Act.

The United States High Commissioner shall receive the same compensation as is now received by the Governor General of the Philippine Islands, and shall have such staff and assistants as the President may deem advisable and as may be appropriated for by Congress, including a financial expert, who shall receive for submission to the High Commissioner a duplicate copy of the reports of the insular auditor. Appeals from decisions of the insular auditor may be taken to the President of the United States.

The salaries and expenses of the High Commissioner and his staff and assistants shall be paid by the United States.

The first United States High Commissioner appointed under this Act shall take office upon the inauguration of the new government of the Commonwealth of the Philippine Islands.

(5) The government of the Commonwealth of the Philippine Islands shall provide for the selection of a Resident Commissioner to the United States, and shall fix his term of office. He shall be the representative of the government of the Commonwealth of the Philippine Islands and shall be entitled to official recognition as such by all departments upon presentation to the President of credentials signed by the Chief Executive of said government. He shall have a seat in the House of Representatives of the United States, with the right of debate, but without the right of voting. His salary and expenses shall be fixed and paid by the government of the Philippine Islands. Until a Resident Commissioner is selected and qualified under this section, existing law governing the appointment of Resident Commissioners from the Philippine Islands shall continue in effect.

(6) Review by the Supreme Court of the United States of cases from the Philippine Islands shall be as now provided by law; and such review shall also extend to all cases involving the constitution of the Commonwealth of the Philippine Islands.

SEC. 8. (a) Effective upon the acceptance of this Act by concurrent resolution of the Philippine Legislature or by a convention called for that purpose, as provided in section 17—

(1) For the purposes of the Immigration Act of 1917, the Immigration Act of 1924 (except section 13 (c)), this section, and all other laws of the United States relating to the immigration, exclusion, or expulsion of aliens, citizens of the Philippine Islands who are not citizens of the United States shall be considered as if they were aliens. For such purposes the Philippine Islands shall be considered as a separate country and shall have for each fiscal year a quota of fifty. This paragraph shall not apply to a person coming or seeking to come to the Territory of

Hawaii who does not apply for and secure an immigration or passport visa, but such immigration shall be determined by the Department of the Interior on the basis of the needs of industries in the Territory of Hawaii.

(2) Citizens of the Philippine Islands who are not citizens of the United States shall not be admitted to the continental United States from the Territory of Hawaii (whether entering such Territory before or after the effective date of this section) unless they belong to a class declared to be nonimmigrants by section 3 of the Immigration Act of 1924 or to a class declared to be nonquota immigrants under the provisions of section 4 of such Act other than subdivision (c) thereof, or unless they were admitted to such Territory under an immigration visa. The Secretary of Labor shall by regulations provide a method for such exclusion and for the admission of such excepted classes.

(3) Any Foreign Service officer may be assigned to duty in the Philippine Islands, under a commission as a consular officer, for such period as may be necessary and under such regulations as the Secretary of State may prescribe, during which assignment such officer shall be considered as stationed in a foreign country; but his powers and duties shall be confined to the performance of such of the official acts and notarial and other services, which such officer might properly perform in respect of the administration of the immigration laws if assigned to a foreign country as a consular officer, as may be authorized by the Secretary of State.

(4) For the purposes of sections 18 and 20 of the Immigration Act of 1917, as amended, the Philippine Islands shall be considered to be a foreign country.

(b) The provisions of this section are in addition to the provisions of the immigration laws now in force, and shall be enforced as a part of such laws, and all the penal or other provisions of such laws not inapplicable, shall apply to and be enforced in connection with the *provisions* of this section. An alien, although admissible under the provisions of this section, shall not be admitted to the United States if he is excluded by any provision of the

immigration laws other than this section, and an alien, although admissible under the provisions of the immigration laws other than this section, shall not be admitted to the United States if he is excluded by any provision of this section.

(c) Terms defined in the Immigration Act of 1924 shall, when used in this section, have the meaning assigned to such terms in that Act.

SEC. 9. There shall be no obligation on the part of the United States to meet the interest or principal of bonds and other obligations of the government of the Philippine Islands or of the Provincial and municipal governments thereof, hereafter issued during the continuance of United States sovereignty in the Philippine Islands: Provided, That such bonds and obligations hereafter issued shall not be exempt from taxation in the United States or by authority of the United States.

RECOGNITION OF PHILIPPINE INDEPENDENCE AND WITHDRAWAL OF AMERICAN SOVEREIGNTY.

SEC. 10. (a) On the 4th day of July immediately following the expiration of a period of ten years from the date of the inauguration of the new government under the constitution provided for in this Act the President of the United States shall by proclamation withdraw and surrender all right of possession, supervision, jurisdiction, control, or sovereignty then existing and exercised by the United States in and over the territory and people of the Philippine Islands, including all military and other reservations of the Government of the United States in the Philippines (except such naval reservations and fueling stations as are reserved under section 5), and, on behalf of the United States, shall recognize the independence of the Philippine Islands as a separate and self-governing nation and acknowledge the authority and control over the same of the government instituted by the people thereof, under the constitution then in force.

(b) The President of the United States is hereby authorized and empowered to enter into negotiations with the government of the Philippine Islands, not later than

two years after his proclamation recognizing the independence of the Philippine Islands, for the adjustment and settlement of all questions relating to naval reservations and fueling stations of the United States in the Philippine Islands, and pending such adjustment and settlement the matter of naval reservations and fueling stations shall remain in its present status.

NEUTRALIZATION OF PHILIPPINE ISLANDS.

SEC. 11. The President is requested, at the earliest practicable date, to enter into negotiations with foreign powers with a view to the conclusion of a treaty for the perpetual neutralization of the Philippine Islands, if and when Philippine independence shall have been achieved.

NOTIFICATION TO FOREIGN GOVERNMENTS.

SEC. 12. Upon the proclamation and recognition of the independence of the Philippine Islands, the President shall notify the governments with which the United States is in diplomatic correspondence thereof and invite said governments to recognize the independence of the Philippine Islands.

TARIFF DUTIES AFTER INDEPENDENCE.

SEC. 13. After the Philippine Islands have become a free and independent nation there shall be levied, collected, and paid upon all articles coming into the United States from the Philippine Islands the rates of duty which are required to be levied, collected, and paid upon like articles imported from other foreign countries: Provided, That at least one year prior to the date fixed in this Act for the independence of the Philippine Islands, there shall be held a conference of representatives of the Government of the United States and the government of the Commonwealth of the Philippine Islands, such representatives to be appointed by the President of the United States and the Chief Executive of the Commonwealth of the Philippine Islands, respectively, for the purpose of formulating recommendations as to future trade relations between the Government of the United States and the independent government of the

Philippine Islands, the time, place, and manner of holding such conference to be determined by the President of the United States; but nothing in this proviso shall be construed to modify or affect in any way any provision of this Act relating to the procedure leading up to Philippine independence or the date upon which the Philippine Islands shall become independent.

IMMIGRATION AFTER INDEPENDENCE

SEC. 14. Upon the final and complete withdrawal of American sovereignty over the Philippine Islands the immigration laws of the United States (including all the provisions thereof relating to persons ineligible to citizenship) shall apply to persons who were born in the Philippine Islands to the same extent as in the case of other foreign countries.

CERTAIN STATUTES CONTINUED IN FORCE.

SEC. 15. Except as in this Act otherwise provided, the laws now or hereafter in force in the Philippine Islands shall continue in force in the Commonwealth of the Philippine Islands until altered, amended, or repealed by the Legislature of the Commonwealth of the Philippine Islands or by the Congress of the United States, and all references in such laws to the government or officials of the Philippines or Philippine Islands shall be construed, insofar as applicable, to refer to the government and corresponding officials respectively of the Commonwealth of the Philippine Islands. The government of the Commonwealth of the Philippine Islands shall be deemed successor to the present government of the Philippine Islands and of all the rights and obligations thereof. Except as otherwise provided in this Act, all laws or parts of laws relating to the present government of the Philippine Islands and its administration are hereby repealed as of the date of the inauguration of the government of the Commonwealth of the Philippine Islands.

SEC. 16. If any provision of this Act is declared unconstitutional or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder

of the Act and the applicability of such provisions to other persons and circumstances shall not be affected therebv.

EFFECTIVE DATE.

SEC. 17. The foregoing provisions of this Act shall not take effect until accepted by concurrent resolution of the Philippine Legislature or by a convention called for the purpose of passing upon that question as may be provided by the Philippine Legislature.

Approved, March 24, 1934.

APPENDIX 4

Portions of the Constitution of Philippines Adopted by the Philippine Constitutional Convention, February 8, 1935

ARTICLE VI.

LEGISLATIVE DEPARTMENT

SECTION 1. The Legislative power shall be vested in a National Assembly. The members of the National Assembly shall not exceed one hundred and twenty, shall be chosen every three years, and shall be apportioned among the several provinces as nearly as may be according to the number of their respective inhabitants, but each province shall have at least one Member. The National Assembly shall by law make an apportionment within three years after the return of every enumeration, and not otherwise. Until such apportionment shall have been made, the National Assembly shall consist of ninety-eight Members, of whom eighty-seven shall be elected by the representative districts as now provided by law; and three by the Mountain Province, and one by each of the other eight existing special provinces. The Members of the National Assembly in the provinces of Sulu, Lanao, and Cotabato shall be chosen as may be determined by law; in all other provinces they shall be elected by the qualified voters therein.

SEC. 2. No person shall be a Member of the National Assembly unless he has been five years a citizen of the Philippines, is at least thirty years of age, and, at the time of his election, a qualified elector, and a resident of the province in which he is chosen for not less than one year immediately prior to his election.

. . . . . .

SEC. 9. (1) The President shall submit within fifteen days of the opening of each regular session of the National Assembly a budget of receipts and expenditures, which shall be the basis of the general appropriation bill. The National Assembly may not increase the appropriations recommended by the President for the operation of the Government as specified in the Budget, except the appropriations for the National Assembly and the Judicial De-

partment. The form of the budget and the information that it should contain shall be prescribed by law.

(2) No provision or enactment shall be embraced in the general appropriation, unless it relates specifically to some particular appropriation in the bill; and any such provision or enactment shall be limited in its operation to such appropriations.

. . . . . .

SEC. 13. (1) All money collected on any tax levied for a special purpose shall be treated as a special fund and paid out for such purpose only. If the purpose for which a special fund was created has been fulfilled or abandoned, the balance, if any, shall be transferred to the general funds of the Government.

(2) No money shall be paid out of the Treasury except in pursuance of an appropriation made by law.

(3) No public money or property shall be appropriated, applied, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary as such, except when such priest, preacher, minister or dignitary is assigned to the armed forces or to any penal institution, orphanage, or leprosarium.

. . . . . .

ARTICLE VII.

EXECUTIVE DEPARTMENT

SEC. 1. The Executive power shall be vested in a President of the Philippines.

SEC. 2. The President shall hold his office during a term of six years, and together with the Vice-President chosen for the same term, shall be elected by direct vote of the people. The election returns for President and Vice-President, duly certified by the board of canvassers of each province, shall be transmitted to the National Assembly. Upon receipt of such returns the National Assembly shall forthwith, in public session, count the votes, and proclaim

the persons elected President and Vice-President. The persons respectively having the highest number of votes for President and Vice-President shall be declared elected, but in case of two or more shall have an equal and the highest number of votes for either office, the National Assembly shall, by a majority vote of all its Members, elect one of said persons as President or Vice-President.

SEC. 3. No person may be elected to the office of President or Vice-President, unless he is a natural-born citizen of the Philippines, a qualified voter, forty years of age or over, and has been a resident of the Philippines for at least ten years immediately preceding the election.

. . . . . .

SEC. 11. (1) The President shall have control of all the executive departments, bureaus, or offices, exercise general supervision over all local governments as may be provided by law, and take care that the laws be faithfully executed.

(2) The President shall be commander in chief of all armed forces of the Philippines and, whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion, insurrection, or rebellion. In case of invasion, insurrection, or rebellion, or imminent danger thereof, when the public safety requires it, he may suspend the privileges of the writ of *habeas corpus*, or place the Philippines or any part thereof under martial law.

(3) The President shall nominate and with the consent of the Commission on Appointments of the National Assembly, shall appoint the heads of the executive departments and bureaus, officers of the Army from the rank of colonel, of the Navy and Air Forces from the rank of captain or commander, and all other officers of the Government whose appointments are not herein otherwise provided for, and those whom he may be authorized by law to appoint; but the National Assembly may by law vest the appointment of inferior officers, in the President alone, in the courts, or in the heads of departments.

(4) The President shall have the power to make appointments during the recess of the National Assembly, but such appointments shall be effective only until disapproval by

the Commission on Appointments or until the next adjournment of the National Assembly.

(5) The President shall from time to time give to the National Assembly information of the state of the Nation, and recommend to its consideration such measures as he shall judge necessary and expedient.

(6) The President shall have the power to grant reprieves, commutations, and pardons, and remit fines and forfeitures, after conviction, for all offenses, except in cases of impeachment, upon such conditions and with such restrictions and limitations as he may deem proper to impose. He shall have the power to grant amnesty with the concurrence of the National Assembly.

(7) The President shall have the power, with the concurrence of a majority of all the Members of the National Assembly, to make treaties, and with the consent of the Commission on Appointments, he shall appoint ambassadors, other public ministers, and consuls. He shall receive ambassadors and other ministers duly accredited to the Government of the Philippines.

SEC. 12. (1) The executive departments of the present Government of the Philippine Islands shall continue as now authorized by law until the National Assembly shall provide otherwise.

(2) The heads of departments and chiefs of bureaus or offices and their assistants shall not, during their continuance in office, engage in the practice of any profession, or intervene, directly or indirectly, in the management or control of any private enterprise which in any way may be affected by the functions of their office; nor shall they, directly or indirectly, be financially interested in any contract with the Government, or any subdivision or instrumentality thereof.

(3) The President may appoint the Vice-President as a member of his cabinet and also as head of an executive department.

ARTICLE XII.

Conservation and Utilization of Natural Resources

Section 1. All agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines, or to corporations or associations at least sixty *per centum* of the capital of which is owned by such citizens, subject to any existing rights, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution. Natural resources, with the exception of public agricultural land, shall not be alienated, and no license, concession, or lease for the exploitation, development, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, renewable for another twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases beneficial use may be the measure and the limit of the grant.

APPENDIX 5

Ordinance Appended to the Constitution of the Philippine Commonwealth

Section 1. Notwithstanding the provisions of the foregoing Constitution, pending the final and complete withdrawal of the sovereignty of the United States over the Philippines—

(1) All citizens of the Philippines shall owe allegiance to the United States.

(2) Every office of the Government of the Commonwealth of the Philippines shall, before entering upon the discharge of his duties, take and subscribe an oath of office, declaring, among other things, that he recognizes and accepts the supreme authority of and will maintain true faith and allegiance to the United States.

(3) Absolute toleration of religious sentiment shall be secured and no inhabitant or religious organization shall be molested in person or property on account of religious belief or mode of worship.

(4) Property owned by the United States, cemeteries, churches, and parsonages or convents appurtenant thereto, and all lands, buildings, and improvements used exclusively for religious, charitable, or educational purposes shall be exempt from taxation.

(5) Trade relations between the Philippines and the United States shall be upon the basis prescribed in section six of Public Act Numbered One hundred and twenty-seven of the Congress of the United States approved March twenty-four, nineteen hundred and thirty-four.

(6) The public debt of the Philippines and its subordinate branches shall not exceed limits now or hereafter fixed by the Congress of the United States, and no loans shall be contracted in foreign countries without the approval of the President of the United States.

(7) The debts, liabilities, and obligations of the present Government of the Philippine Islands, its provinces, municipalities, and instrumentalities, valid and subsisting at the time of the adoption of the Constitution, shall be assumed and paid by the Government of the Commonwealth of the Philippines.

(8) The Government of the Commonwealth of the Philippines shall establish and maintain an adequate system of public schools, primarily conducted in the English language.

(9) Acts affecting currency, coinage, imports, exports, and immigration shall not become law until approved by the President of the United States.

(10) Foreign affairs shall be under the direct supervision and control of the United States.

(11) All acts passed by the National Assembly of the Commonwealth of the Philippines shall be reported to the Congress of the United States.

(12) The Philippine recognizes the right of the United States to expropriate property for public uses, to maintain military and other reservations and armed forces in the Philippines, and, upon order of the President of the United States, to call into the service of such armed forces all military forces organized by the Government of the Commonwealth of the Philippines.

(13) The decisions of the courts of the Philippines shall be subject to review by the Supreme Court of the United States as now provided by law, and such review shall also extend to all cases involving the Constitution of the Philippines.

(14) Appeals from decisions of the Auditor General may be taken to the President of the United States.

(15) The United States may, by Presidential proclamation, exercise the right to intervene for the preservation of the Government of the Commonwealth of the Philippines and for the maintenance of the Government as provided in the Constitution thereof, and for the protection of life, property, and individual liberty and for the discharge of Government obligations under and in accordance with the provisions of the Constitution.

(16) The authority of the United States High Commissioner to the Government of the Commonwealth of the Philippines as provided in Public Act Numbered One hundred and twenty-seven of the Act of Congress of the United States approved March twenty-four, nineteen hundred and thirty-four, is hereby recognized.

(17) Citizens and corporations of the United States shall enjoy in the Commonwealth of the Philippines all the civil rights of the citizens and corporations, respectively, thereof.

(18) Every duly adopted amendment to the Constitution of the Philippines shall be submitted to the President of the United States for approval. If the President approve the amendment or if the President fail to disapprove such amendment within six months from the time of its submission, the amendment shall take effect as a part of the Constitution.

(19) The President of the United States shall have authority to suspend the taking effect of or the operation of any law, contract, or executive order of the Government of the Commonwealth of the Philippines, which in his judgment will result in a failure of the Government of the Commonwealth of the Philippines to fulfill its contracts, or to meet its bonded indebtedness and interest thereon or to provide for its sinking funds, or which seems likely to impair the reserves for the protection of the currency of the Philippines, or which in his judgment will violate international obligations of the United States.

(20) The President of the Commonwealth of the Philippines shall make an annual report to the President and Congress of the United States of the proceedings and operations of the Government of the Commonwealth of the Philippines and shall make such other reports as the President or Congress may request.

SEC. 2. Pending the final and complete withdrawal of the sovereignty of the United States over the Philippines, there shall be a Resident Commissioner of the Philippines to the United States who shall be appointed by the President of the Commonwealth of the Philippines with the consent of the Commission on Appointments. The powers and duties of the Resident Commissioner shall be as provided in section seven, paragraph five of Public Act Numbered One Hundred and twenty-seven of the Congress of the United States, approved March twenty-four, nineteen hundred and thirty-four, together with such other duties as the National Assembly may determine. The qualifications,

compensation, and expenses of the Resident Commissioner shall be fixed by law.

SEC. 3. All other provisions of Public Act Numbered One hundred and twenty-seven of the Congress of the United States, approved March twenty-four, nineteen hundred and thirty-four, applicable to the Government of the Commonwealth of the Philippines are hereby made a part of this Ordinance as if such provisions were expressly inserted herein.

APPENDIX 6

Act of June 17, 1930, c. 497, Title III, Sec. 301, 46 Stat. 685
U. S. Code, Title 19 (Customs Duties), Sec. 1301

"SEC. 301. *Philippine Islands.* There shall be levied, collected, and paid upon all articles coming into the ~~United~~ States from the Philippine Islands the rates of duty which are required to be levied, collected, and paid upon like articles imported for foreign countries: *Provided,* That all articles, the growth or product of or manufactured in the Philippine Islands from materials the growth or product of the Philippine Islands or of the United States, or of both, or which do not contain foreign materials to the value of more than 20 per centum of their total value, upon which no drawback of customs duties has been allowed therein, coming into the United States from the Philippine Islands shall hereafter be admitted free of duty; *Provided, however,* That in consideration of the exemptions aforesaid, all articles, the growth, product, or manufacture of the United States, upon which no drawback of customs duties has been allowed therein, shall be admitted to the Philippine Islands from the United States free of duty: *And provided further,* That the free admission, herein provided, of such articles, the growth, product, or manufacture of the United States, into the Philippine Islands, or of the growth, product, or manufacture, as hereinbefore defined, of the Philippine Islands into the United States, shall be conditioned upon the direct shipment thereof, under a through bill of lading, from the country of origin to the country of destination: *Provided,* That direct shipments shall include shipments in bond through foreign territory contiguous to the United States: *Provided, however,* That if such articles become unpacked while en route by accident, wreck, or other casualty, or so damaged as to necessitate their repacking, the same shall be admitted free of duty upon satisfactory proof that the unpacking occurred through accident or necessity and that the merchandise involved is the identical merchandise originally shipped from the United States or the Philippine Islands, as the case may be, and that its condition has not been changed except for such damage as may have been sustained: *And*

provided, That there shall be levied, collected, and paid, in the United States, upon articles, goods, wares, or merchandise coming into the United States from the Philippine Islands a tax equal to the internal-revenue tax imposed in the United States upon the like articles, goods, wares, or merchandise of domestic manufacture; such tax to be paid by internal-revenue stamp or stamps, to be provided by the Commissioner of Internal Revenue, and to be affixed in such manner and under such regulations as he, with the approval of the Secretary of the Treasury shall prescribe; and such articles, goods, wares, or merchandise shipped from said islands to the United States shall be exempt from the payment of any tax imposed by the internal revenue laws of the Philippine Islands: *And provided further,* That there shall be levied, collected, and paid in the Philippine Islands, upon articles, goods, wares, or merchandise going into the Philippine Islands from the United States, a tax equal to the internal-revenue tax imposed in the Philippine Islands upon the like articles, goods, wares, or merchandise of Philippine Islands manufacture; such tax to be paid by internal-revenue stamps or otherwise, as provided by the laws of the Philippine Islands; and such articles, goods, wares, or merchandise going into the Philippine Islands from the United States shall be exempt from the payment of any tax imposed by the internal-revenue laws of the United States: *And provided further,* That in addition to the customs taxes imposed in the Philippine Islands, there shall be levied, collected, and paid therein upon articles, goods, wares, or merchandise imported into the Philippine Islands from countries other than the United States the internal-revenue tax imposed by the Philippine Government on like articles manufactured and consumed in the Philippine Islands or shipped thereto for consumption therein from the United States: *And provided further,* That from and after June 17, 1930, all internal-revenues collected in or for account of the Philippine Islands shall accrue intact to the general government thereof and be paid into the insular treasury."

APPENDIX 7

Congressional Record (Senate), Vol. 78, Pt. 6, page 6380

(April 11, 1934)

. . . . . .

Mr. Norris. I am offering a perfecting amendment, to perfect the language of the committee amendment, which the Senator from Mississippi seeks to strike out.

The Chief Clerk. It is proposed, on page 214, at the end of line 15, to add the following proviso:

> *Provided*, That all taxes collected under this subsection upon the products of the Philippine Islands shall not be covered into the general fund of the Treasury of the United States, but shall be held as a separate fund and paid into the treasury of the Philippine Islands. If the Philippine government by any law provides for any subsidy to be paid to the producers of copra, coconut oil, or allied products, then this proviso shall at once become null and void.

Mr. Norris. Mr. President, I take this opportunity to thank the Senator from Mississippi (Mr. Harrison) for his kindness in agreeing to lay aside the oil amendment until today.

There has been presented by the committee amendment a very serious question in which the farmers of the United States are particularly interested. They are all very much worried about bringing into this country copra and coconut oil, which interferes with the sale of fats and oils of all kinds produced here in America from cattle, hogs and so forth. A tariff tax is levied upon such products when they come here in the regular way, but the tariff tax does not apply to products from the Philippine Islands, with the result that producers there are able to escape such a tax.

Within the last year or so the administration has started on a farm-relief program. We have limited the production of all, or practically all, farm products. The farmer, concerned with that limitation, finds that fats and oils imported from the Philippine Islands do not have to pay a tax under

the tariff law, and therefore, without any tax of any kind levied upon them, come in competition with the fats and oils produced in this country. Of course with reference to oils produced elsewhere and imported into the United States there is a tariff tax.

It seems to me we are confronted with the fact that it is very difficult to do justice both to our wards, the Filipinos, and to the American farmer. When the farmer finds himself thus handicapped he is justified in the belief that he must have some protection against the importation of coconut oil and copra from the Philippine Islands which, under existing law, can be brought in without the payment of any tariff tax.

As a Senator very eloquently said yesterday, if we have to do an injustice either to the Filipinos or to the American farmer, it would be better to do that injustice to the Filipinos rather than to the American farmer. It seems to me that unless we amend the proposal of the committee, we are confronted with a situation in which we must do an injustice to one or the other. I think I speak the sentiment of the Senate when I say that when we hold the Philippine Islands without their consent under our Government, we have no moral right to levy a tariff tax upon the products of those islands as we do upon the products of foreign countries.

The processing tax which was inserted in the bill by the House provided for a tax of 5 cents a pound upon coconut oil and copra. Its effect, if unmodified, would be the same as though we had levied a tariff tax. The Government would make money out of it because the tax would be paid into the Treasury of the United States.

As one who is in favor of giving independence to the Philippine Islands just as quickly as we possibly can, I voted for every amendment to the Philippine independence bill that had a tendency to bring about that end. Those of us who felt as I did favored those amendments, and then we voted for the bill as it finally became a law.

Mr. President, my amendment in the first place provides that the revenue derived from this tax shall not be covered into the Treasury of the United States but shall be held in a separate fund and paid to the Philippine government. The

objection first raised was and is that the Philippine government could still grant a bonus or subsidy in the same amount to the producers of coconut oil and copra in the Philippines, and thus nullify the effect of our tax. In other words, if the Philippine government should do that, our tax would be absolutely of no effect so far as the importation of coconut oil and copra from the Philippines are concerned. It would not help us and it would not help the American farmer. The Philippine producer of the coconut oil and copra would be able, with a bonus of the same amount as the tax, to sell as he did before, and the American farmer would get no benefit from the tax.

To meet that objection, it is provided in my amendment that if the Philippine government at any time shall grant a bonus or subsidy for the production of coconut oil or copra, then the provision will at once become null and void and of no effect, and the producers will stand under the amendment of the committee just as it was reported.

MR. CONNALLY. Mr. President, I desire to ask the Senator a question about his amendment. Suppose the Filipino government should say, "We will take this tax, and then we will just pay it back to the producer."

MR. NORRIS. They cannot do it under the amendment.

MR. CONNALLY. The Senator's amendment would prohibit that?

MR. NORRIS. Yes, sir.

MR. CONNALLY. In other words, they could neither use the tax as a subsidy, nor could they grant an independent subsidy?

MR. NORRIS. They could not do either one.

MR. CONNALLY. If that be true, I cannot see why the amendment would not have the effect of aiding the domestic producer, because the tax would be paid, and it is immaterial from his viewpoint what is done with it, whether it is thrown in the sewer or given to the Philippine government.

MR. NORRIS. The Philippine government will get the money. They can use it in any way they want to use it, except as prohibited by the amendment itself; and that only goes so far as to say that, while they are getting this money, they must not by law provide for giving a subsidy

to the production in the Philippine Islands of copra and coconut oil.

MR. REED. Mr. President—

THE VICE-PRESIDENT. Does the Senator from Nebraska yield to the Senator from Pennsylvania?

MR. NORRIS. Let me yield first to the Senator from Iowa (Mr. Murphy), who has been trying for some time to get my attention.

MR. MURPHY. Mr. President, the Senator from Texas (Mr. Connally) has asked the question I had in mind.

MR. JOHNSON. Mr. President—

MR. NORRIS. Very well. I yield, then, to the Senator from Pennsylvania.

MR. REED. Mr. President, has the Senator considered the question whether we have power to levy a tax by a law which on its face states that the revenue is not to be taken for the American Treasury, but for the treasury of an alien government?

MR. NORRIS. No; in my judgment, we probably could not do that. I have never thought of it before; but, at first blush, I should say that if we gave the tax to an alien government, there would be something in that suggestion. We are not doing that, however. We are giving it to our wards. They are now under our Government, and we are supreme as to them. We can pass any law in that regard that we desire to pass.

MR. REED. I grant that; but I do not believe that the Federal Government has the constitutional power to levy a tax for the benefit of any other government, whether it is the government of the city of Omaha or the government of the Philippine Islands or a government set up under any other system.

MR. NORRIS. I do not agree with the Senator. I do not believe that any constitutional provision is involved here by which this tax would be nullified; and we have done the same thing in our tariff laws. We have given back, in some instances, tariffs that have been levied.

MR. REED. To other governments?

MR. NORRIS No; not to other governments.

MR. REED. Then I have another question to ask the Senator: Why is it any more unfair to the Filipinos to put a

processing tax on one of their agricultural products than it is unfair to our own farmers to put a processing tax on their products?

MR. NORRIS. I do not think it would be any more unfair.

MR. TYDINGS. Mr. President, will the Senator yield?

MR. NORRIS. In just a moment. The Philippine people are not included in the law, however. They are expressly exempted from the law that enables the Secretary of the Treasury to put a processing tax upon the people of the United States.

MR. REED. I do not agree with the Senator.

MR. NORRIS. I have the law here.

MR. REED. The law says that no tariff shall be put on their products, and this is not a tariff. It is a domestic tax; an excise.

MR. NORRIS. I will say to the Senator from Pennsylvania that I have the law here on my desk.

MR. FESS. The Agricultural Adjustment Act exempts them.

MR. BORAH. Mr. President, I found last night that the A. A. A. Act expressly exempts the Philippine Islands.

MR. NORRIS. Yes; it is done by express statute. I have it here on my desk.

MR. REED. We could extend the A. A. A. by an amendment to cover the Philippines.

MR. NORRIS. I think probably we could.

MR. BORAH. That is really what we are doing in this bill.

MR. REED. Mr. President, if the Senator will permit one more interruption, I cannot see why we owe any higher degree of fairness to the Filipino than we do to our own citizens.

MR. NORRIS. That is just what I say. I agree to that.

MR. REED. While it is true that many of these processing taxes are refunded to the American farmer, it is equally true that many of them are not.

MR. NORRIS. Yes.

MR. REED. Take, for example, the tax which has been put on paper napkins and the tax which has been put on jute bags, in order to protect cotton. Those taxes are not refunded to anybody; and why those American citizens

should be taxed and be expected not to complain, and then we should be so tender of the Filipino I cannot see.

MR. TYDINGS. Mr. President, will the Senator from Nebraska yield there?

MR. NORRIS. I will yield in just a moment.

The law exempts the Philippine Islands. That may have been wrong, but it is now the law. They are expressly exempted in the act that empowers the Secretary of Agriculture to levy a processing tax upon the American farmer.

The Senator says we ought to levy this tax on the Filipino farmer just the same. The Senator may be right, but we have not now the law under which we can do that. We might amend the law and do it. In my judgment, it is simply tantamount to saying, "Your remedy is not right. Let us take another one." I agree that probably a law might be drawn which would meet the proposition in the way the Senator has suggested, but we are not now confronted with that situation.

MR. TYDINGS. Mr. President, will the Senator yield to me?

MR. NORRIS. I yield.

MR. TYDINGS. I wish to point out the distinction between the effect of the law upon the Filipino and upon the American farmer. Before I point that out I want to say that I recognize that the Senator from Nebraska is trying to be fair with both peoples in the philosophy of his amendment. But may I point out that the processing tax on the American farmer is ostensibly a tax levied for the benefit of the American farmer, while the processing tax levied on the Filipino is a tax, not for the benefit of the Filipino but of the American farmer. If the Filipino were coming in upon the same plane with the American farmer, I would have no protest at all, but as I see it, we are asked to compel him to do something which we do not compel the American farmer to do, while they are all Americans.

MR. BORAH. Mr. President—

The presiding Officer (Mr. O'Mahoney in the chair)

Does the Senator from Nebraska yield to the Senator from Idaho?

MR. NORRIS. I yield.

MR. BORAH. May I suggest to the Senator from Maryland that while the processing tax is, as he says, "ostensibly" for the benefit of the American farmer, as a practical fact, it would have exactly the same effect upon the American farmer as upon the Filipino.

MR. TYDINGS. I think there is much in the Senator's contention but I simply wanted to point out that the purpose is different.

MR. NORRIS. I think there is something in the contention, but the suggestion that has come from the Senator from Pennsylvania is simply to this effect, as I see it: "I am opposed to your remedy, I am opposed to doing it that way; I want to do it some other way." He may be right about that; there may be a better way, but faced as we are with the pending bill, it would be folly to stop its consideration long enough to frame a statute that would carry it out in the other way. There would be a great difficulty. At the time we framed the statute we expressly exempted the Philippine Islands and had in mind as one of the things, the suggestion that has so well been made by the Senator from Maryland.

MR. REED. Mr. President, will the Senator yield to me?

MR. NORRIS. I yield.

MR. REED. The amendment as reported by the Committee on Finance expresses exactly, to my mind, the fair way of accomplishing the desired result. It imposes a processing tax of 3 cents a pound directly on the competing oils.

MR. NORRIS. The Senator's contention, as I see it, is just the same as though we levied a tax on the products of the Philippine Islands. Technically we could do that; legally we could enact that kind of a law and enforce it. Morally, it would be wrong. I myself have always opposed the levying of tariffs upon the products of the Philippine Islands, particularly when we take into consideration the fact that we are holding them under our government without their consent. It is so abhorrent to think that under those conditions we should levy a tariff tax that I would like to find some way to help the American farmer without resorting to that kind of a remedy.

MR. BORAH. Mr. President, will the Senator yield?

MR. NORRIS. I yield.

MR. BORAH. I know what the Senator has in mind, and I am in entire sympathy with it, but the trouble is that we are asked to hand back to the Government that which we are to take away from the citizen. It does not seem to me that that meets the proposition of dealing fairly with the people.

MR. ROBINSON of Arkansas. Mr. President, to give the subsidy to the Philippine government does not help their trade; it does not help their production, and it does not help the people directly.

MR. NORRIS. Mr. President, the suggestion made by the Senator from Idaho (Mr. Borah) is correct. What is the object of all this legislation? What is the object of all our farm legislation? It is to increase the prices of the products of the farmer. This amendment would have that effect, I admit. It would raise the price to the consumer of these oils. There is no doubt about that. That is the object we have in view. If the Senator's suggestion is correct, then we must let our farmers suffer under this unjust situation, because we cannot meet it without increasing the price to somebody else.

APPENDIX 8

Provisions of Sections 602 and 602½ (Subsections [a] and [g]) of the Revenue Act of 1934 at the Various Stages of the Measure

1. The following was the form of Section 602 of the bill as introduced in the House of Representatives, February 9, 1934:

> "(a) There is hereby imposed upon the first domestic processing of coconut oil or sesame oil, or of combinations or mixtures brought into the United States in chief value of either or both such oils, a tax of 5 cents for each pound thereof processed, which shall be paid by the processor. For the purposes of this section, the term 'first domestic processing' means the first use in the United States, in the manufacture or production of an article intended for sale, of the article with respect to which the tax is imposed.
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> . . . . . .
>
> "(g) All collections under this section shall, notwithstanding any other provisions of law, be covered into the general fund of the Treasury of the United States."

(As introduced, the bill contained no Section 602½.)

2. The Committee on Ways and Means reported the bill out on February 12, 1934, without change. (House Report 704, 73d Congress, Second Session.)

3. On February 21, 1934, the bill passed the House of Representatives without change.

4. On February 22, 1934, the bill was referred to the Senate Committee on Finance and reported out on March 28, 1934. (See explanation of change made by said Committee in Section 602 in Senate Report 558, 73 Congress, Second Session, page 52.)

The following is the form of Section 602, subsections (a) and (g), as reported out by the Senate Committee on Finance (there was still no Section 602½ in the bill):

> "Section 602. (a) There is hereby imposed upon the first domestic processing of coconut oil, sesame oil, or palm oil, or palm kernel oil, or sunflower oil, or imported whale oil, or imported fish oil, or imported marine-animal oil, or of combinations of such oils or of mixtures containing substantial quantities of any one or more of such oils, a tax of 3 cents per each pound thereof processed, which shall be paid by the processor. For the purposes of this section, the term 'first domestic processing' means the first use in the United States, in the manufacture or production of an article intended for sale, of the article with respect to which the tax is imposed, but does not include the use of palm oil in the manufacture of tin plate.
>
> . . . .
>
> "(g) All collections under this section shall, notwithstanding any other provisions of law, be covered into the general fund of the Treasury of the United States."

5. The following is the form of Section 602 (a) and (g) as amended in and passed by the Senate (there was still no section numbered "602½"):

> "(a) There is hereby imposed upon the first domestic processing of coconut oil, or sesame oil, or palm oil, or palm kernel oil, or sunflower oil, or imported whale oil, or imported fish oil (excepting cod and cod liver oil), perilla oil, or imported marine-animal oil, or of combinations of such oils or of mixtures containing substantial quantities of any one or more of such oils, a tax of 3 cents per each pound thereof processed, which shall be paid by the processor. For the purposes of this section, the term 'first domestic processing' means the first use in the United States, in the manufacture or production of an article intended for sale, of the article with respect to which the tax is

imposed, but does not include the use of palm oil in the manufacture of tin plate: Provided, That all taxes collected under this subsection upon the products of the Philippine Islands shall not be covered into the general fund of the Treasury of the United States, but shall be held as a separate fund and paid into the Treasury of the Philippine Islands. If the Philippine Government, by any law, provides for any subsidy to be paid to the producers of copra, coconut oil, or allied products, then this proviso shall at once become null and void.

. . . . . .

"(g) All collections except as provided in subsection (a) under this section shall, notwithstanding any other provisions of law, be covered into the general fund of the Treasury of the United States."

6. On April 17, 1934, the House refused to concur in the Senate's amendments, and appointed members of a Conference Committee. (See Congressional Record Vol. 78, 73d Congress, 2d Session, Part 6, p. 6776.)

7. On the same day the Senate insisted upon its amendments and appointed members of Conference Committee. (See page 6711 of said Congressional Record.)

8. On May 1, 1934, the Conference Committee made its report and explanation of same. See pages 7815-7826 of said Congressional Record and House Report 1385, 73d Congress, 2d Session.

The following was the form of Section 602 and Section 602½ (a) and (g) as reported out by the Conference Committee, and, as the Committee's Report was accepted by both Houses, the following is form as finally enacted and approved on May 10, 1934:

"Section 602. Tax on Certain Oils.

Section 601(c) of the Revenue Act of 1932 is amended by adding at the end thereof a new paragraph as follows:

'(8) Whale oil (except sperm oil), fish oil (except cod oil, cod-liver oil, and halibut-liver oil), marine animal oil, and any combination or mixture containing a substantial quantity of any one or more of such oils, 3 cents per pound. The tax on the articles described in this paragraph shall apply only with respect to the importation of such articles after the date of the enactment of the Revenue Act of 1934, and shall not be subject to the provisions of subsection (b) (4) of this section (prohibiting drawback) or section 629 (relating to expiration of taxes).' ''

''Sec. 602½. Processing tax on certain oils.

(a) There is hereby imposed upon the first domestic processing of coconut oil, sesame oil, palm oil, palm kernel oil, or sunflower oil, or of any combination or mixture containing a substantial quantity of any one or more of such oils with respect to any of which oils there has been no previous first domestic processing, a tax of 3 cents per pound, to be paid by the processor. There is hereby imposed (in addition to the tax imposed by the preceding sentence) a tax of 2 cents per pound, to be paid by the processor, upon the first domestic processing of coconut oil or of any combination or mixture containing a substantial quantity of coconut oil with respect to which oil there has been no previous first domestic processing, except that the tax imposed by this sentence shall not apply when it is established, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, that such coconut oil (whether or not contained in such a combination or mixture), (A) is wholly the production of the Philippine Islands or any other possession of the United States, or (B) was produced wholly from materials the growth or production of the Philippine Islands or any other possession of the United States, or (C) was brought into the United States on or before the 30th day after the date of the enactment of this Act or produced from materials brought into the United States on or before the 30th day after the date of the enactment of this act, or (D) was purchased under a bona fide contract entered into

prior to April 26, 1934, or produced from materials purchased under a bona fide contract entered into prior to April 26, 1934. All taxes collected under this section with respect to coconut oil wholly of Philippine production or produced from materials wholly of Philippine growth or production, shall be held as a separate fund and paid to the Treasury of the Philippine Islands, but if at any time the Philippine Government provides by any law for any subsidy to be paid to the producers of copra, coconut oil, or allied products, no further payments to the Philippine Treasury shall be made under this subsection. For the purposes of this section the term 'first domestic processing' means the first use in the United States, in the manufacture or production of an article intended for sale, of the article with respect to which the tax is imposed, but does not include the use of palm oil in the manufacture of tin plate.

. . . . . .

(g) All collections except as provided in subsection (a) under this section shall, notwithstanding any other provisions of law, be covered into the general fund of the Treasury of the United States."

APPENDIX 9

Letter of President of the United States to Congress requesting reconsideration of coconut oil processing tax provisions of Revenue Act of 1934

"May 28, 1934.

"TO THE CONGRESS OF THE UNITED STATES:

Early in the present session of the Congress the Philippine Independence Act was passed. This Act provided that after the inauguration of the new interim or commonwealth form of government of the Philippine Islands, trade relations between the United States and the Philippine Islands shall be as now provided by law. Certain exceptions, however, were made. One of these exceptions required levying on all coconut oil coming into the United States from the Philippine Islands in any calendar year in excess of 448,000,000 pounds, the same rates of duty now collected by the United States on coconut oil imported from foreign countries.

It is, of course, wholly clear that the intent of the Congress by this provision was to exempt from import duty 448,000,000 pounds of coconut oil from the Philippines.

Later in the present session, the Congress in the Revenue Act imposed a 3-cent per pound processing tax on coconut oil from the Philippines. This Act, was, of course, directly contrary to the intent of the provision in the Independence Act cited above.

During this same period, the people of the Philippine Islands through their legislature accepted the provisions of the Independence Act on May 1, 1934.

There are three reasons why I request reconsideration by the Congress of the provisions for a 3-cent per pound processing tax.

First, it is a withdrawal of an offer made by the Congress of the United States to the people of the Philippine Islands.

Second, enforcement of this provision at this time will produce a serious condition among many thousands of families in the Philippine Islands.

Third, no effort has been made to work out some form of compromise which would be less unjust to the Philippine people and at the same time attain, even if more slowly, the object of helping the butter and animal fat industry in the United States.

I, therefore, request reconsideration of that provision of the Revenue Act which relates to coconut oil in order that the subject may be studied further between now and next January, and in order that the spirit and intent of the Independence Act be more closely followed.

(Signed) FRANKLIN D. ROOSEVELT."